(21,183.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 164.

PINK FRANKLIN, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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1 STATE OF SOUTH CAROLINA:

In the Supreme Court.

I, U. R. Brooks Clerk of the Supreme Court do hereby certify that the following Original Writ of Error, Original Citation, original assignment of Error certified copy of case and Exceptions, certified copies of all opinions and certified copy of Bond in the case of the State of South Carolina Respondent against Pink Franklin Appellant—hereto attached completes the record in the above stated case.

Given under my hand and the Seal of the Court, at Columbia, this 14, day of May A. D. 1908.

[Seal of the Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

2 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1907, First Circuit, Orangeburg County.

THE STATE, Plaintiff-Respondent,
against
PINK FRANKLIN, Defendant-Appellant.

Opinion by Y. J. Pope, C. J.

The defendants Pink Franklin and Sad Franklin, his wife, were tried at the fall term of the Court of General Sessions, for Orangeburg County, for the crime of murder of one Henry E. Valentine.

The defendant Sad Franklin was found not guilty and we will therefore dismiss any further reference to her.

The jury found the defendant Pink Franklin guilty of murder and he was duly sentenced to be hanged on the 25th, day of October 1907. The defendant thereupon appealed to this Court, and it now becomes our duty to pass upon his grounds of appeal.

At the beginning before the trial was entered upon a motion was made to quash the indictment because the Grand Jury who found the true bill was unconstitutional:

1st. Because it is alleged that the law providing for a Grand Jury was null and void being in violation of Section 17 Article III, of the constitution of the State of South Carolina which provides: "Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." In affect it is alleged that the act relating to the selection, drawing and summoning of Juries in the Circuit Courts of this State approved the 7th, day of February 1902, and the supplementary Act entitled "An act to amend an Act entitled an Act relating to the selection, drawing

and summoning of Jurors in the Circuit Courts of this State", approved the 7th, day of February, A. D. 1902, by adding
3 thereto a section to be known as section 18*a* to provide against an omission in preparing a Jury list and boxes" approved January 21st, 1905 Vol. XXIV page 917.

Now it is perfectly obvious from an investigation of these two acts that their entire text relates to the subject matter of Juries the empanelling, selection and drawing, the whole purpose is to provide for Juries. It is well known that the provisions of an Act devoted to one subject matter fills the requirements of this Section of the Constitution: State vs. Crosby 51 S. C. 247; Blair vs. Morgan 59 S. C. 52; State vs. Gibbs 60 S. C. 500; and Barksdale vs. Laurens 58 S. C. 415 and many more of the same character. This exception is overruled.

The second proposition of the appellant that the Court should have quashed the indictment because the Constitution of 1895 provides that Grand Jurors shall be electors of the State, and that electors under the Constitution of 1895 are different from the electors provided for in the Constitution of 1868 and is therefore unconstitutional; the United States Government having provided in 1868 in an act dated the 25th, day of June 15th, Statute at Large 73, that no person who is allowed to vote or to hold office in 1868 shall be disqualified thereafter from being such an elector.

1st. Our constitution of 1895, lays no restriction upon color or previous condition to entitle one to be an elector.

2nd. The Act of Congress cited had no reference to the selection of Jurors, it relates solely to an *a*ffect upon admission to Congress.

3rd. But above all things it would be wholly inapplicable to our Constitutional provisions in regard to Juries. We must hold therefore that this ground of appeal is not well taken and is overruled.

Third. It is insisted that so much of our Acts of 1892 and 1905, as provides for Jury Commissioners in selecting Grand and Petit Jurors is unconstitutional and void. We fail to see how the selection of proper and competent Jurors is unconstitutional. No reference is made to color or previous condition as prerequisites for service as Jurors; for such Jury Commissioners are merely to select men of good moral character and legally competent colored men when they have good character are competent for service on the juries, there is nothing in this ground and we overrule the same.

4 Fourth. It is contended by the appellant that his motion for a continuance should be granted, he claims that time was not sufficient for him to examine the testimony at the Coroner's inquest. It is true that the handwriting may not have been as good as desired yet an inspection shows that every opportunity was afforded the appellant and his attorneys for inspecting such testimony.

This Court has so frequently held that motions for continuance are left to the discretion of the Presiding Judge. After consideration of this ground of appeal we overrule the same.

Fifth. The appellant insists that the testimony of the two witnesses as to the dying declarations of the deceased Henry Valentine, should not have been admitted. We have carefully examined the

testimony and the law, quite recently this Court in passing upon this question has held in the case of The State vs. McCoomer and Spivens: "Dying declerations are admissible when it appears—

1st. That the death of the deceased was imminent at the time the declarations were made. 2nd. That the deceased was so fully aware of this as to be without hope of recovery. 3rd. That the subject of the charge was the death of the declarant and the circumstances of the death was the subject of the declarations. State vs. Bannister 35 S. C. 295; State vs. Johnson 26 S. C. 152. Primarily the Circuit Judge decides whether these conditions have been met, and this Court will not interfere with his ruling except when clearly convinced that he reached an incorrect conclusion prejudicial to the accused."

Also in the recent case of the State vs. Gallman the Court was careful to lay down the law on this subject which was exactly in accord with the above cited case. J. H. Easterling one of the witnesses in this case speaking of Henry Valentine's condition says: "He seemed to be suffering very much" and when asked the question as to the condition of his mind said "I couldn't detect anything wrong with his mind.". "He seemed to have realized that he was fatally shot, he had a hemorrhage, he did not seem to have any hopes of life" and when asked if the deceased made any explanation in regard to the affect of the wound said "that he knew that he was shot fatally, or thought so and knew that he was in a bad fix."

5 The witness Walter Hutto when asked did he talk with Mr. Valentine or not he answered "yes sir I did."

Q. "What was his condition at the time you talked with him,"

A. "He told me that he was shot by Franklin and was in a dying condition."

Q. "Did he or not at that time have any hope of life?"

A. "No sir; he said it was a death shot, he told me that Pink Franklin shot him, and it was a death shot and after being there a short time he pulled off his watch and said to me take my watch I will have no further use for it."

It is very evident that the man was in extremis, he died a few hours afterward and no doubt was expressed by witnesses as to his dying condition. Under the circumstances the admission of this testimony as dying declarations was perfectly legitimate.

The Circuit Judge was not in error and therefore this ground of appeal is overruled.

Sixth. The appeal insists that the Circuit Judge was in error in refusing to direct a verdict of not guilty. The Constitution of this State is very explicit in its direction that the Circuit Judge shall not charge the Jury upon the facts. The orderly administration of justice requires that all proper evidence should be admitted and the jury must determine the fact, testimony should be exceedingly clear and without contradiction where a Circuit Judge assumes to direct a verdict. There has been full testimony on both sides and it is in the province of the Jury to pass upon the testimony. The Circuit Judge made no mistake here, this exception is overruled.

Seventh. The appellant insists that the Circuit Judge made a mistake when he declared the law relating to self-defense.

What the Circuit Judge said on that subject was:

"The right of self-defense rests on certain well defined principles and they are not numerous. Where a person is without fault in bringing about the difficulty, where they are in danger of losing their lives or of sustaining serious bodily harm, and where there are no other probable means of escape save to kill the assailant, then
6 the law says they have a right to kill and that is self defence. If the testimony satisfies you that the defendant- were without fault in bringing about the difficulty, that they were in danger of losing their lives or of sustaining serious bodily harm and that there was no other means of escape but to kill, then that makes out a case of self-defence, provided that a person of ordinary reason and firmness would have done the same, and provided that the same impression would have been created in the mind of a person of ordinary firmness and reason, that is that they were in serious danger and that there was no probable means of escape. If they establish that plea then they are entitled to a verdict of not guilty. If any of the facts necessary to make out their plea are not established then their plea is not established and cannot avail. Each and every one of the facts necessary to the plea must be established."

And the Circuit Judge also said "In this case the defendant interposes the plea of self defence, that is that the killing was a lawful one. That it was done in the exercise of a lawful right.

Where a person kills another in self defence that is lawful, when a person kills another and pleads that it was done in self defence on him rests the burden of proving his plea, not by the same measure as is incumbent on the State, that he must prove his defence beyond a reasonable doubt but he must prove by the preponderance or greater weight of the evidence. That is in reference to his special plea. When the defendant- here interpose the plea of self defence on them rests the burden of proving that plea by the preponderance of the testimony."

It seems to us that the Circuit Judge correctly interpreted the law in this matter, we will not interfere. Let this ground of appeal be overruled.

Eighth. The appellant alleges that the Circuit Judge erred in charging the Jury as follows:

"A constable stands on the same footing as a sheriff, if a warrant is placed in his hands to make an arrest it becomes his duty to make that arrest and the law clothes him with the power to do all that is necessary to make the arrest, you see then that you will have to enquire as to whether it was necessary for him to go into the
7 house or not. Ordinarily if a constable goes up to a man and says I arrest you that is usually as far as he has to go, and that is all that is necessary if the other party submits to the arrest. The other party has a right to ask the reason for his arrest and his authority, if he has a warrant it then becomes his duty to exhibit the same, then if the party submits that is as far as the officer has the right to go. If he refuses to submit to the arrest then the officer has the right to go to whatever length is necessary to make him submit. If a man is in his own house he has a right to go to that house

and go through the same process, he has the right to go in the house if it is necessary, he has the right to call the person out and if he refuses to come out then he has a right to go in the house. If the door is open he can go in, if the door is closed he can demand that it be opened and if that is refused he can break down the door. He represents the majesty of the law and that may override all resistance. It uses whatever force is necessary and stops at nothing short of accomplishing its purpose. If it is necessary for them to pull down the house they have the right to do that. If an arrest is resisted and active resistance is resorted to then the officer still has the right to use as a matter of fact, whatever force is necessary to accomplish his purpose."

On the request of a Juror the Circuit Judge was requested to say whether "a constable or officer of the law has a right to enter a house without first stating his mission?" His Honor said "not unless it was necessary." The Juror then asked "It is not necessary for an officer to call to the party on the inside and state his mission. His Honor replied, "I should think not common prudence would demand that he ask admission, but he has the right to demand admission." The Juror then asked "If he received no response he would have the right to enter." His Honor then said "yes sir, or if the house were closed and he received no response and he has good reason to believe that the refusal to answer amount to a resistance to his authority, then he has the right to force an entrance. If admission is refused he has a right to force admission."

No more responsible position is assumed by a peace officer than the right to make an arrest under the authority of a mandate of the law.

8 The object is to carry into execution what the peace of society may demand. This wholesale objection to submission to a warrant of arrest is freighted with disaster to the community and there should not be a hesitance on the part of good citizens to assist in preserving the peace and good order of society. The Circuit Judge was evidently influenced by such considerations and made no mistake in what has just been stated to have been his position. Let this ground of appeal be overruled.

It is the judgment of this Court that the judgment of the Circuit Court be, and the same is hereby affirmed.

And it is ordered that the case be remitted to the Circuit Court for its direction fixing a new day for the execution of the law upon the appellant Pink Franklin.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

9 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1907, First Circuit, Orangeburg County.

THE STATE, Plaintiff-Respondent,
against
PINK FRANKLIN, Defendant-Appellant.

Concurring Opinion by C. A. Woods, A. J.

I concur in this judgment but think the following construction of the Judge on the subject of arrest should appear in support of the judgment: "When a person is charged with a crime before a Magistrate and he issues a warrant commanding an officer of the law to arrest the person so charged and places the warrant in the hands of such officer, then it becomes the duty of the officer to make the arrest, to execute the warrant. He may use whatever means are necessary to affect the arrest, he may go at whatever time will best affect the execution of the warrant and he may employ whatever force is necessary. He may call to his assistance whatever person or persons he may deem necessary for purposes or identification, or otherwise; the law clothes him with all authority that it is necessary for him to use. It clothes him with no more than that however, he is required to and must exercise a sound discretion, such as a person of ordinary prudence and firmness would exercise. If he exceeds the limit to which it is necessary for him to go, then he becomes a transgressor and the law does not follow him in his trespass on the rights of another.

"When an officer seeks to arrest a person and makes known his character as such officer, it then becomes the duty of such person to submit to arrest, if that person refuses to submit to the arrest then he resists and becomes a further violator of the law in resisting the arrest; he has no right to do that, it is his duty to submit to the arrest. When a person comes up to arrest another whether he has a warrant or not, that person has the right to demand the cause
10 of the arrest and to demand a sight of the warrant, and it is the duty of the officer to show him. A person has the right to resist an unlawful arrest, the Court has held that unlawful arrest is assault and the law gives him the right to resist an assault and employ whatever means may be necessary to free himself from the assault. A person has the right to demand the authority of an officer but he has no right to resist him by force. If he does he must then suffer the consequence."

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

11 *Bond.*

Know all men by these presents, That we, Pink Franklin as principal and L. W. Hook and W. N. Inabinet as sureties, are held and firmly bound unto the State of South Carolina in the full and just sum of two hundred and fifty dollars, to be paid to the said State of South Carolina, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 7" day of May, in the year of our Lord one thousand nine hundred and eight. Whereas, lately at a session of the Supreme Court of the State of South Carolina, in a suit pending in said Court between the State of South Carolina, as plaintiff and the said Pink Franklin, as defendant, a judgment was rendered against the said Pink Franklin, and the said Pink Franklin having obtained a writ of error and filed a copy thereof in the office of the clerk of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the State of South Carolina, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Pink Franklin shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then this obligation to be void, otherwise to remain in full force and effect.

PINK FRANKLIN. [L. S.]
L. W. HOOK. [L. S.]
W. N. INABINET. [L. S.]

Sealed and delivered in the presence of

I. SIDO HAMPTON,
As to Sureties.
ED. D. WALKER,
As to Sureties.

Approved by

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

STATE OF SOUTH CAROLINA,
County of Orangeburg:

Personally appeared before me L. W. Hook and W. N. Inabinet, both of whom being duly sworn, say, that they are each of them residents and freeholders within the State of South Carolina, and that they are each of them worth the sum of two hundred and fifty dollars over and above all debts, liabilities and exemptions.

L. W. HOOK.
W. N. INABINET.

Sworn to before me this 7th day of May, A. D. 1908.

[Seal W. L. Izlar, Notary Public, South Carolina.]

W. L. IZLAR,
Notary Public, S. C.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

12 [Endorsed:] State of South Carolina. In the Supreme Court. The State, Resp'd't, v. Pink Franklin, Appel't. Certified Copy of Bond. Bond. Supreme Court of South Carolina, County of Orangeburg. Filed 8 May, 1908. U. R. Brooks, Clerk.

13 STATE OF SOUTH CAROLINA:

In Supreme Court.

PINK FRANKLIN, Plaintiff in Error, Petitioner,
vs.
STATE OF SOUTH CAROLINA, Respondent, Defendant in Error.

Petition for Writ of Error.

The petitioner herein Pink Franklin, considering himself aggrieved by the final decision of the Supreme Court of South Carolina in rendering judgment against him in the above entitled cause, the petitioner hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a Supersedeas bond.

Assignmen- of errors herewith.

JACOB MOORER &
JNO. ADAMS,
Attorneys for Petitioner.

STATE OF SOUTH CAROLINA,
Supreme Court:

Let the writ of error issue upon the execution by Pink Franklin in the sum of two hundred and fifty dollars said bond when approved to act as a Supersedeas.

Dated 7th of May, 1908.

Y. J. POPE,
Chief Justice of Supreme Court of State of South Carolina.

14 Original.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

PINK FRANKLIN, Plaintiff in Error, Petitioner,
vs.
STATE OF SOUTH CAROLINA, Respondent, Defendant in Error.

Assignment of Errors.

Now comes the above named Pink Franklin, plaintiff in error and files herewith his petition for a writ of error and says that there are errors in the record and proceedings in the above entitled cause and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignments.

M. & A., Att'ys. The Supreme Court of the State of South Carolina erred in holding and deciding that Art 2 known as the suffrage provision of the Constitution of 1895 of the State of South Carolina is valid *valid.* The validity of said Art. was denied and drawn in question by the plaintiff in error herein on the ground that said Art. is repugnant to the Constitution of the United States and in controvention thereof.

The said errors are more particularly set forth as follows:

I.

That the said Art. 2 known as the suffrage provision of the Constitution of 1895 of the State of South Carolina, did not abridge the rights, privileges and immunities of citizens of South Carolina or this plaintiff in error as such citizens, as guaranteed and provided for by the act of Congress approved the 25 day of June 1868, (15th Statutes at Large, page 73.)

15 II.

That the said Supreme Court erred in holding and deciding that the act of Congress approved the 25th day of June 1868 is wholly inapplicable to our Constitutional provisions in regards to juries.

III.

That the said Supreme Court erred in affirming the following charge of the Court below: "if the door is closed he can demand that it be opened and if that is refused he can break down the door. * * * A constable stands on the same footing as a Sheriff. Juror Wannamaker asks 'Has a Constable or officer of the law the right to enter a house without first stating his mission? His Hon. "Not unless it is necessary." Juror, Is it not necessary for an officer to call to the party to the inside and state his mission? His Hon. I should think not Mr. Wannamaker. Juror, If he receives no responce to his call would he have the right to enter? His Hon.

Yes sir or if the house were closed and receives no responce and he has good reason to believe that the refusal to answer amounts to a resistence to his authority then he has a right to force an entrance.' "

IV.

That the said Supreme Court erred in holding and deciding, that in overruling the motion to direct a verdict of not guilty, on the ground, that the warrant under which the deceased Henry E. Valentine attempted to arrest the petitioner in error was unlawful null and void, that the trial Court committed no error.

And also in holding that this petitioner in error was not denied his rights under the Constitution of the State of South Carolina of 1895 Art. One, sec. five, and under the fourteenth and fifteenth amendments to the Constitution of the United States.

For which errors your petitioner herein prays that the said Judgment of the Supreme Court of South Carolina dated March seventeenth, 1908, be reversed and remanded for such further adjudication as may be just, right and equitable.

JACOB MOORER &
JOHN ADAMS,
Attorneys for Petitioner.

16 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Honorable, the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of South Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Pink Franklin, defendant and plaintiff in error, and The State of South Carolina, plaintiff, and defendant in error, (1) wherein was drawn in question the validity (or statute) of (or an authority exercised under) the United States, and the decision was against their validity, or (2) wherein was drawn in question the validity of a statute of (or an authority exercised under) said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity: or wherein was drawn in question the construction of a clause of the constitution of, or of a treaty, or statute of, or commission held under the United States and the decision was against the right, title, privilege specially set up and claimed under such clause of the said constitution and statute, a manifest error hath happened to the great injury and damage of the said Pink Franklin, plaintiff in error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 10 day of June next in the said Supreme Court, to be then and there held, that
17 the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 11th day of May, 1908.

[Seal U. S. Circuit Court, District of So. Carolina.]

C. J. MURPHY,
C. C. C., U. S. Dist., S. C.

Allowed by
Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

Y. J. POPE.

18 THE UNITED STATES OF AMERICA, *ss:*

The President of The United States to The State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at and before The Supreme Court of The United States at Washington, D. C., within thirty days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of South Carolina, wherein Pink Franklin is plaintiff in error and you are defendant in error, to show cause if any there be why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done in his behalf.

Witness the Cheif Justice of The Supreme Court of The State of South Carolina this 7th day of May, 1908.

Y. J. POPE,
Cheif Justice Supreme Court, South Carolina.

[Seal Supreme Court of South Carolina.]

Attest:
U. R. BROOKS,
Clerk Supreme Court, South Carolina.

ORANGEBURG, S. C., *May 12th*, 1908.

I, attorney of record for the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of The United States.

P. T. HILDEBRAND,
Sol. 1st Cir.

May 12, 1908.

19 [Endorsed:] Original. Writ of Error. Assignment of Errors. Petition for Writ.

20 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1907, First Circuit, Orangeburg County.

THE STATE, Plaintiff, Respondent,
against
PINK FRANKLIN, Defendant, Appellant.

Statement of the Case.

The defendant Pink Franklin together with his wife Sad Franklin, was indicted for the murder of one Henry Valentine on the 29th day of July, 1907. This case came on to be heard at the September term of the Court of General Sessions for Orangeburg County, before His Honor Judge J. C. Klugh, Circuit Judge. At the sounding of the docket and the calling of the case and before the defendants were arraigned, Counsel for the defence moved to quash and set aside the indictment upon the following grounds:

1. That the jury law under which the Grand Jury found the "True Bill" is unconstitutional in that it is in violation of the constitution of the state of South Carolina and the constitution of the United States.

These motions were all overruled then the defendants' Counsel moved to continue the case on the affidavits set out in the case,
21 which was also overruled and the case ordered to trial on September the ninth, 1907. When the state rested its case the defense then moved the Court to direct a verdict of not guilty as to both Sad and Pink Franklin. This motion which is fully set out in the case was overruled by the Court. The jury having found Sad Franklin not guilty and Pink Franklin guilty, His Honor the Circuit Judge sentenced the defendant Pink Franklin to be hanged on the 25th day of Oct. 1907. The defendant excepted to the ruling, sentence and judgement of the Court and now appeals to this Court for a reversal of the decision, sentence and judgment of the Circuit Court and the granting of a new trial.

In General Sessions.

THE STATE
vs.
PINK FRANKLIN and SAD FRANKLIN.

Messrs. Hildebrand and Glaze, for the State.
Messrs. Moorer and Adams, for the Defence.

On call of the above entitled case John Adams and Jacob Moorer Esqs. Attorneys for the Defendants in the above case submitted to the Court the following motions.

Now come the defendants Pink Franklin and Sad Franklin defendants in the above entitled action and move to quash and set aside

the indictment in this case, and under which he is held on the following grounds:

1. That the Jury law under which the Grand Jury, which found the True Bill was organized, is unconstitutional null and void.

That is true, if the Court pleases because the said Jury law is in violation *to* article three, section seventeen of the constitution of the State of South Carolina. The reading of this section is as follows:

22 Every act or resolution having the force of law shall relate to but one subject and that shall be expressed in the title.

The said Jury law herein referred to and herein claimed to be in violation of the Constitution of the State of South Carolina and therefore null and void is entitled an Act relating to the selection, drawing and summoning of Jurors in the Circuit Courts of this State. Approved the 7th, day of February, 1902 and am*m*ended by an act entitled An Act to amend an Act entitled An Act relating to the selection and drawing and summoning of Jurors in the Circuit Courts of this State approved Feb. 7th, 1902 by adding thereto a section to be known as 18 A. to provide against an omission in preparing the Jury Lists and Boxes. Approved Jan. 21st, 1905.

Argument to the Court by John Adams, Esq.

2. Now come Pink Franklin and Sad Franklin and move the Court to quash and set aside the indictment against them on the ground:

Because the said indictment is null and void because the Grand Jury, which found the True Bill in this case was an unlawful Grand Jury, because the Grand Jury was drawn pursuant to an act of the General Assembly of the State of South Carolina, entitled "An Act relating to the Selection summoning and drawing Jurors in the Circuit Courts of this State, which act is unconstitutional and is in violation of the Constitution of 1895 of this State, because the said act after prescribing the qualifications for jurors as provided for in said Constitution," adds, "As they may deem otherwise well qualified to serve as jurors, meaning such as the Jury Commissioners may deem otherwise well qualified to serve as jurors, the said Act was approved the 7th day of February A. D. 1902.

Argument.

3. Now come the Defendants Pink Franklin and Sad Franklin and move the Court to quash and set aside the indictment against them upon the ground:

23 That the Jury law under which the Grand Jury that found the True Bill was organized is unconstitutional null and void, because the said Jury Law was enacted pursuant to and predicated upon the Constitution of 1895 of the State of South Carolina and, requires the same qualifications for jurors as are required for electors under the said Constitution of 1895 of the State of South Carolina.

And further because, the qualifications for electors as required by the said Constitution of 1895, in Art. 2, (which Article is hereby referred to and made a part *if* this motion) are in violation of the Act

of Congress approved the 25th day of June, 1868. Cited. (15th Stats. at Large 73.)

By the restrictions of the above cited act The State of South Carolina is prohibited from amending or changing the Constitution of 1868 of said State in any manner that deprives persons from being Electors, who are qualified as electors under the Constitution of 1868 of said State.

The suffrage clause of the Constitution of 1868 is as follows: Art. 8, Sec. 2. Every male citizen of the United States of the age of twenty one years and upward not laboring under the disabilities named in the Constitution, without distinction of race, color or former condition who shall be a resident of this State at the time of the adoption of this constitution, or who shall reside thereafter in this state one year and in the county in which he offers to vote sixty days next, preceding any election, shall be entitled to vote for all office-s that are now or hereafter may be elected by the people, and upon all questions submitted to the electors at any election; Provided, that no such person be allowed to vote or to hold office who is now, or hereafter may be disqualified therefor by the Constitution of the United States until such disqualification be removed by Congress of the United States: Provided further, that no person while kept in any Almshouse or Asaylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or to hold office.

24 His Honor after hearing arguments on the above motion holds.

Taking up the motions in the order that they were submitted to the Court, the first is to quash and set aside the indictment on the grounds that the Grand Jury was illegally constituted because the act under which the Grand Jury was drawn is unconstitutional in that it violated Section Seventeen, Article three.

The Act of 1902 provided for the selection and drawing and summoning of Jurors, and the Act of 1905 provided for the supplying of an omission of the Act of 1902, by adding Section Eighteen, A. Manifestly the preparation of the Jury Box is a part of the Selection and drawing of Jurors as is the preparation of the Jury List, any amendment which makes the act clearer and more plain should be supplied, that amendment cannot be held to relate a different subject but is merely amendatory, and therefore the motion to quash and set aside the indictment on that ground is overruled and refused.

The motion to quash on the second ground is that the selection of such Jurors as the Jury Commissioners may deem qualified is placing the power of drawing Jurors in the hands of the Jury Commissioners.

It is manifestly impossible for the Legislature of this State to canvass the State or County to get men of good moral character to serve as Jurors, and it is therefore necessary that this should be a duty imposed on some board and if it could be considered an infringement it would have to stand, it is merely the imposing of a duty and therefore the motion to quash cannot be sustained on that ground and is refused.

The other motion has something to do with the question of suf-

frage that, I have neither the information, nor the inclination to pass upon. I don't think that it can be successfully maintained that Congress ever intended to place any restriction on the Jury Laws of any State. Each State in the Union has the right to
25 limit its Jury Laws or its laws of Government and therefore the motion to quash on that ground is refused.

The above entitled case being set for trial on Friday of the first week and the Court by reason of other business not being able to reach the case on the day appointed.

On Saturday of the first week comes John Adams, Esq., Attorney for the Defendants above and moves that the Court continue that Case of the State against Franklin on the Grounds.

Now comes John Adams, Attorney at Law, deposes and swear- that two weeks before the sitting of this present September term of the Court of General Sessions for Orangeburg County, that he called upon Mr. Salley who is the Clerk of the Court of General Sessions and Common Pleas for the County of Orangeburg and asked to see the testimony taken by the Coroner who made the inquisition over the body of one Mr. Valentine the deceased in the above entitled case, and that the said Clerk of the Court of Common Pleas and General Sessions, informed the deponent herein that the Coroner kept his books in a room up stairs and that at the time the room up stairs was locked. Thereupon the Deponent made search for the Coroner so that he could get into the room and read over the testimony herein referred to and that the said Coroner could not be found. That the Deponent then called upon the Solicitor at his office, and asked if he had the original testimony that had been signed and sworn to and he was handed the testimony asked of the Solicitor and upon notice and further information from the Solicitor it was ascertained that the testimony was partly in Shorthand and that the Stenographer who took the testimony was out of town, and therefore the deponent at the time could not get a proper and intelligent reading of the testimony so necessary upon issues of that kind and nature.

That the said John Adams further deposes and says that on Tuesday or Wednesday of the present week, he called upon the Deputy Sheriff, Mr. A. W. Tharin and asked that he go with me (the
26 me here means Deponent) into the room being used by the Grand Jury, the Grand Jury at the time was in Court room waiting for a Bill, and get the Coroner's book of inquisitions in which room it was kept by the Coroner. That the Deponent together with Mr. Tharin, the Deputy Sheriff went into the room succeeded in getting the book, carried it into the Sheriff's office and examined it for the *the* purpose of finding the testimony taken at the hearing referred to — inquest. That upon examination the testimony had not been copied into the Coroner's book according to law and that up to the time the Deponent who is Counsel for the defence in the case hereinto referred, has not been able to read and become familiar with the testimony absolutely needed for contradiction on the trial of such causes.

The above affidavit is properly verified.

By way of argument John Adams Attorney states.

After ten days the record taken at the Coroner's inquest must be

filed with the Clerk of Court. That the Solicitor had this record in his possession and upon going to the Solicitor to see the testimony and having a copy made of the record that the Solicitor informed him that the record was partly in shorthand and that the party who took the testimony was out of town. He called on Mr. Salley, the Clerk and was informed that the testimony had not been filed and that the Coroner's room was reported locked up. He was told later that the Coroner kept his records at his house on the edge of the City. The Coroner is required to have his office and keep his records at the Court House. "It seems to us that we have a right to inspect this testimony for the purpose of finding and preparing a defence for the Defendant and if we have not been given the ten days then it seems to us, that as far as Franklin is concerned we have a right to continue the case. If the State wishes to go on and try the woman (I will state that there are two defendants in the case, the one the wife of the Defendant Pink Franklin) we are willing to go on and if the State of South Carolina can find her guilty to do so. We are willing to go on with her case. But if the state is willing to
27 be fair in this matter and give us our rights in the case, then the State will be willing to give us the ten days that we are entitled to for the purpose of viewing the record. This affair happened some distance from here, and it would be impossible in the length of time that we have had to get the necessary witnesses in the case. It seems to us that in this case our rights have been abused and we have not had the proper showing to make the defense that we ought to make in a case of such serious nature. This record here is hardly legible and we do not think that we have had the proper showing.

Mr. HILDEBRAND: When the Attorney came to my office and asked for the Coroner's inquisition I handed him the papers in the case and told him at the time, that I did not know whether he could read the writing or not, that it was written in a kind of short hand or running hand and that I did not know that I could read it myself. As far as trying to suppress the records in the case I have done nothing of the kind but have given the attorney all the records that I had in the case. I tendered him the records with the remarks that I have stated to you. Your Honor will readily see that the record is written as I have stated in a kind of running long hand and I doubt if your Honor can read it. The young man that took the testimony was out of town at the time and I so stated.

The motion to continue it refused, and the case will come up in its regular order, it will be called for trial on Monday morning or as soon thereafter as is convenient.

28 STATE OF SOUTH CAROLINA,
County of Orangeburg:

Arrest Warrant.

I, J. I. Valentine, Magistrate, in and for the said County and the said State. To any Lawful Constable:

Whereas, Complaint upon oath has been made unto me by J. D.

Thomas that at Thomas Place in the County and State aforesaid on 22nd of May 1907, one Pink Franklin violated and broke an Agricultural Contract.

These are therefore to command you to apprehend the said Defendant, Pink Franklin and bring him before me to be dealt with according to law.

Given under my hand and seal, this 25th day of May one thousand nine hundred and 7.

J. I. VALENTINE, *Magistrate.* [L. S.]

Affidavit.

Personally appeared before me, J. I. Valentine, a Magistrate of said County and said State, J. D. Thomas, Union Township who being duly sworn, says: On the 22nd day of May, 1907, One Pink Franklin did wilfully and knowingly violate and break an Agricultural Contract given to deponent for year of 1907, all of which is against the form of the Statute, made and provided in such cases, and against the peace and dignity of the State of South Carolina.

J. D. THOMAS.

Sworn to before me this the 25th day of May, 1907.

J. I. VALENTINE, *Magistrate.*

I hereby appoint H. E. Valentine, a special constable to execute the within warrant.

J. I. VALENTINE, *Magistrate.*

I hereby certify that the within is a true and correct copy of the original warrant of arrest now on file in office Clerk of Court of General Sessions. Witness my hand and official seal this 25th, September, A. D. 1907.

G. L. SALLEY, [L. S.]
C. C. P., G. S.

29 *Indictment for Murder.*

At a Court of General Sessions, begun and holden in and for the County of Orangeburg, in the State of South Carolina, at Orangeburg, in the County and State aforesaid, on the first Monday of September, in the year of our Lord one thousand nine hundred and seven. The Jurors of and for the County aforesaid in the State aforesaid, upon their oath, Present, That Pink Franklin and Sad Franklin, on the twenty ninth day of July, in the year of our Lord one thousand nine hundred and seven, with force and arms, at Orangeburg, C. H. in the County of Orangeburg and State of South Carolina, in and upon one Henry E. Valentine, feloniously, wilfully and of his malice aforethought, did make an assault; and that the said Pink Franklin and Sad Franklin, him the said Henry E. Valentine, then and there feloniously, wilfully and of his malice afore-

thought with a pistol did shoot and wound; giving to the said Henry E. Valentine thereby in and upon the body of him the said Henry E. Valentine one mortal wound; of which said mortal wound the said Henry E. Valentine then and there died.

And so the Jurors aforesaid, upon their oath aforesaid, do say that the said Pink Franklin and Sad Franklin, him the said Henry E. Valentine, then and there, in the manner and by the means aforesaid feloniously, wilfully and of his malice aforethought, did kill and murder against the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

HILDEBRAND, *Solicitor.*

30 *Testimonies.*

Dr. W. S. JENNINGS, being duly sworn, testifies as follows:

Q. Where do you live, Dr.?
A. In Orangeburg County this State.
Q. What is your profession?
A. I practice medicine.
Q. Did you know Henry E. Valentine?
A. Yes sir.
Q. Where did he live?
A. He lived in Orangeburg County.
Q. What section of the county?
A. I think it was in Union.
Q. Did he live near your residence?
A. Well sir I suppose he lived about five miles from me.
Q. Do you remember being called to see him about the twenty ninth of last July?
A. Yes sir I was sent for.
Q. Where did you find him?
A. I found him in a house on Sol Spires' place in this county.
Q. Was he in the house by himself?
A. No sir there was considerable of a crowd there.
Q. What time did you see him?
A. It was about nine thirty or ten in the morning I think.
Q. Did you examine him?
A. Yes sir.
Q. What did you find upon examination?
A. I found on his left hand there was a cut through here, it seemed like it was a lick rather than a shot wound, I think that was on the left hand I took notes and have them here with me, here it is in this book, the cut was about two inches long and between the thumb and the index finger.
Q. What was the nature of the *of the* wound you say?
A. It seemed to be more of a laceration than anything else, it was not a smooth wound like a cut but looked like it had been inflicted with some blunt instrument——

Objection. State v. Senn.

I will state that it was not a smooth wound but was lacerated.

Q. What else did you find Dr., if anything?
A. I found a bullet wound between the ninth and tenth ribs.
Q. Did you probe for the bullet?
A. No sir.
Q. Did you ascertain where that bullet went?
A. No sir.
Q. Did you ascertain the calibre of the bullet?
A. Yes sir it was a thirty eight I think.
Q. Were there any powder marks on the body?
A. Yes sir there was a stain of powder or what I took to be powder round the wound on the clothes.
Q. You saw him and attended him then?
A. Yes sir.
31 Q. Was the wound in the left side?
A. Yes sir.
Q. Did you attend Valentine from the time you reached him until he died?
A. I was with him several hours and left him with Dr. Able, I think there were about three other physicians with him.
Q. Did you see him after death?
A. Yes sir.
Q. Did you perform an autopsy on him?
A. No sir.
Q. Did you probe for the bullet?
A. No sir.
Q. Did anyone probe for it?
A. No sir not that I know of.
Q. What was his condition Dr. when you got to him?
A. He was not conscious when I got to him, I asked him if he was shot in more than one place and I think that was all I got out of him.
Q. Was he shot in more than one place?

Objection. On the ground that the witness was unconscious and nothing that he said would be of any consequence.

His Honor rules that if the physician knows of his own knowledge he can testify.

A. I did not see any place but that one place in his left side between the ninth and tenth ribs.
Q. Did that wound that you saw cause the death of Henry E. Valentine?
A. I certainly did not think that anything else caused it, I am confident that that was the cause of his death.

Cross-examination:

Q. How long after the accident was it when you first saw the deceased?
A. I don't know of my own knowledge I was told when he received his wound.
Q. What time of the day was it that you got there?
A. That was between 9:30 and 10.00 a. m.
Q. Did you stay there with him.

A. Not till he died, I considered him dying when I left.
Q. You say that you saw powder marks on the body?
A. Around the bullet wound I did.
Q. Did you see the clothes he had on at the time he was shot?
A. Only a hat was on the body, a shirt.
Q. A top shirt and an undershirt?
A. I have forgotten whether it was a top shirt or an undershirt.
Q. There were powder marks on the shirt you are sure of that part of it?
A. Yes there was a stain I took to be powder marks on his shirt.
Q. Did you give your entire attention to the bullet wound or to the incision on the hand?
32 A. I gave no special attention to wound on the hand and I only dressed the bullet wound temporarily.
Q. Did you get the ball out of that bullet wound?
A. No I did not try to get it out, that is I did not try to probe for it.
Q. You don't know where the ball lodged then?
A. No.
Q. You know where the bullet entered?
A. Yes it entered on the left side between the ninth and tenth ribs.
Q. It entered on the left side of the body between the ninth and tenth ribs, what would be the effect of the bullet stopping between the Sternum and the place it entered?
A. It did not enter the sternum, it entered the stomach over the region of the spleen and if it went on it passed through the left lobe of the liver.
Q. From the help you rendered the deceased could you tell whether any part on the inside of the body was effected or not?
A. We know that the bullet went into the body and that Valentine vomited blood afterwards and that in itself would be conclusive evidence that the ball went into the stomach.
Q. Who were the other doctors that attended Mr. Valentine?
A. There was Dr. Hydrick, Dr. Able and Dr. Barton.
Q. Was there any operation performed that you know of?
A. No sir.
Q. What was done for him?
A. The only thing that was used was a salin- solution that went into him to stimulate him.
Q. Have you had any personal experience with gun shot wounds of this kind?
A. I have never had one to enter and do the damage that this one did.
Q. Where did you find the body of Mr. Valentine when you arrived?
A. I found it in a house on Mr. Sol Spires' place.
Q. Was the house occupied?
A. It had been occupied.
Q. Was anyone in the house when he was carried there?
A. No sir none of the occupants, I was told that they had gone away.

Q. How many bullet holes did you find in the body of Mr. Valentine?

A. Only one hole.

Q. Would you say from your experience that it would be possible for a bullet to enter the body and take the course that it did in this case and death not ensue?

A. I could not know positively what course the bullet took on entering the body, I don't know what organs it entered, I have conclusive evidence however that it entered the stomach.

33 Q. Tell what you found when you got there and what service you rendered?

A. I did nothing but temporarily dressed the wound.

Redirect:

Q. What about that bruise that was found on the left side or the right side I believe it was of Valentine's back?

A. I placed my hand on the bruise and it was about as long as this and about as wide as that (about the size of a man's hand) and there was a light purple spot about the center of it, I don't know what caused it but my own opinion is that a bullet wound would not have caused the wound even if it had gone through there.

Recross:

Q. You found a wound on his right side about the size of your hand?

A. It was not very large, about that size.

Q. Did a bullet cause that wound?

A. I don't know but my opinion is that a bullet could not make a wound like that.

Q. If a bullet entered the body of the deceased it did not cause his death the bullet that made that wound?

A. The bullet wound caused his death but I don't know that that wound was caused by a bullet, that bruise had the appearance of a severe blow or lick.

Dr. A. S. HYDRICK being duly sworn testifies as follows:

Q. What is your profession Doctor?

A. The practice of medicine and surgery.

Q. Were you called to see Henry Valentine in July last?

A. Yes sir I was.

Q. Where did you find him?

A. In a house near the residence of Spires I think it was.

Q. Did you examine him?

A. Yes sir I did.

Q. What was his condition when you saw him?

A. He was unconscious when I saw him shortly after twelve o'clock.

Q. What did you do Doctor?

A. I found on his body several wounds, one gun shot wound entering on the left of the body between the ninth and tenth ribs and

another wound on the left hand, the one in the side was evidently a pistol shot wound and the one on the hand was a lacerated wound, that was between the thumb and the index finger.

Q. What is the difference Doctor between a lacerated wound
34 and an incised wound?

A. One is a clean cut, that is an incised wound and the other is torn and jagged, that is the nature of the wound between the thumb and index finger of Valentine.

Q. What else did you find on the body?

A. On the right of the body I found a spot that was somewhat swollen and congested and near the center of that there was a contusion or bruise.

Q. Did you account for the presence of that wound?

A. It was evidently done, the blow was evidently inflicted by some blunt instrument.

Q. That wound was not connected with the bullet wound?

A. No sir because the surface skin over the wound was abrased.

Q. That was cause- by a blow on the surface?

Objection.

The Doctor can state if he knows from his exper-ence what was the probable cause of the wound.

A. Yes sir.

Q. To what would you attribute the man's condition?

A. He was sulfering from internal hem*m*or-hages and the shock of the wound.

Q. What was his condition?

A. He was dying, we gave him digitalis and other stimulants to resus-itate him.

Q. What was his condition due to?

A. Primarily to the gun shot wound and *and* secondly to internal hem*m*or-hages.

Q. What was the cause of the man's death doctor?

A. I did not see him when he died but if he did die it was from the effect of the gun shot wound that he received.

Q. What was his condition when you left him?

A. I told his friends that he did not have more than a couple of hours to live at most.

Cross:

Q. You have no evidence of his death have you doctor?

A. No not of my own knowledge.

Q. Did you find out what time he did die after you left him?

A. Yes sir I did.

Q. What time did you leave the house where he was?

A. About four o'clock or it may have been three forty five.

Q. Do you know what time he died?

A. I don't know exactly, but I was informed that it was about six thirty or seven.

Q. Did you leave other doctors there?

A. Yes sir I did.

Q. As a matter of medical experience, in a house of that kind doctor, where the wall- were not thoroughly sterilized, and in
35 handling towels that were not sterilized, suppose that some of the other physicians had not adhered to the laws of operation, is it not possible that this man's death was hastened?

A. The evil result of improper sterilization would not have been manifest so soon.

Q. Would it take an hour for infection to set in?

A. Yes it would take twenty four hours.

Q. Would it be possible for a bullet to enter where that one did and not cause death?

A. I have had experience where three or four bullets were fired through a body and did not cause death.

Q. Was that man healthy?

A. Yes it depended altogether whether that bullet wounded any of the internal organs.

Q. What was the range of the bullet in this case?

A. It went through the stomach and through the right lobe of the liver.

Q. What was the range at which that bullet must have been fired?

A. It was fired almost horizontally through the body.

Q. At what level was it fired?

A. About the level of the ninth and tenth ribs.

Q. Suppose two people had been fighting, how must they have been standing for that bullet to have taken the course that it did?

A. That would be hard to say, the slightest change in the position of the hand that held the pistol would make a difference, I could not make any statement as to what position they were in at the time the pistol was fired only this, that they were close enough for the powder to leave a mark on the shirt of the wounded man.

Q. What direction did the ball take?

A. The ball was fired from practically a horizontal position if it had been fired at an angle it could have been very easily distinguished for a bullet makes a peculiar mark on the skin at the point of entrance, you can tell at what angle it was fired.

Q. This ball was fired from a horizontal position?

A. Yes sir, there was possibly some deviation from the right to left.

Q. What must have been the distance of the parties?

A. I had no opportunity to examine the clothing of the deceased but I judge from the character of the wound that the range must have been pretty close and I understand that there were powder marks on the clothing.

Q. At what hour did you reach the scene?

36 A. It was between twelve and one o'clock.

Q. How long did you stay there?

A. I stayed there until about four o'clock and when I found that he did not respond to the restoratives that I gave him I saw that it was no use to stay any longer and so I left.

W. M. CARTER, being duly sworn, testifies as follows:

Q. Where do you live Mr. Carter?
A. I live in Orangeburg County.
Q. You live over in the Spires neighborhood?
A. Yes sir.
Q. Did you know Henry E. Valentine?
A. Yes sir.
Q. Did you see him about the twenty ninth of last July?
A. Yes sir, he came to my house about sundown on Sunday evening and spent the night with me and the next morning we went up to Mr. Charles Spires.
Q. What was your purpose in going there?
A. Mr. Valentine had a warrant for the arrest of Pink Franklin for violation of a Labor Contract.
Q. Would you know the Warrant if you would see it again?
A. Yes sir I think that is the warrant.
Q. How did you come to go up there with Valentine?
A. He pressed me in to *to* go with him as Constable.
Q. You went with him?
A. Yes sir.
Q. Where did you go?
A. We went to Pink Franklin's house.
Q. Did you know the Defendant Franklin?
A. Yes sir I knew him. Mr. Valentine said that he had seen him but he did not know that he would know him and that was one reason that he took me along.
Q. Do you see Franklin in court?
A. Yes sir there he is.
Q. Do you know Franklin's wife?
A. Yes sir.
Q. What is her name?
A. She always went by the name of Sad.
Q. After you and Valentine got to Spires' house where did you go?
A. We got him to go with us and we went from there to Mr. Sol Spires.
Q. Whose place is Franklin living on?
A. He was living on Mr. Charles Spires' place.
Q. Did you get Sol Spires to go anywhere for you?
A. Yes sir we got him to go to Franklin's house to try to get him to come over and work for Mr. Spires so that we would not have to go to his house to arrest him.
Q. How far is Mr. Spires' house from Franklin's?
A. It is just a couple of hundred yards.
Q. Is it in sight of his house?
A. Yes sir.
Q. Did Spires go over there?
A. Yes sir, he said that he did.
37 Q. Did he come back?
A. Yes sir.
Q. After he reported to you and Valentine what did you do?

A. We started on over there and when we got in sight of the house there was some one I took to be Franklin sitting on the door steps of his house, and when he saw us coming he got up and went inside, we went on up to the house and when we got there Mr. Valentine took out his knife and knocked on the steps, he knocked several times and we did not get any response and we heard some one whispering in the house and Mr. *Mr.* Valentine called Franklin by his name four or five times and got no response, and he then said to me, you go round to the back of the house and see whether any one comes out there or not, and I will see if I can get him. I went on round the house and just as I got there the pistol started to firing, and I ran back round the house, and found that the pistol was firing in the house.

Q. What did you do then?

A. I ran on round the house as I said just as soon as I heard the pistol shooting, and just as I ran round the corner of the house, a little boy grabbed me by the leg, and I had to dangle him along. I went on as fast as I could, and just as I got to the house door he shot me.

Q. Who shot you?

A. It must have been him.

Q. Who?

A. Franklin must have done it.

Q. Where did Franklin shoot you?

A. The ball went right in here and hit this rib.

Q. Where were you when you got shot?

A. I was right in the house door.

Q. You were right in the door.

A. Yes sir.

Q. In what door?

A. Right in the room door.

Q. Were you in the room or in the door?

A. I was in the room door.

Q. Where was Valentine?

A. I did not see him then.

Q. Where was Franklin?

A. I did not see him it was so dark in the room.

Q. The house was closed up?

A. Yes sir, the two doors were open, the other part of the house was closed up.

Q. What did you do when you were shot?

A. I got out of the house as quick as I could.

Q. What did you do then?

A. I went on over to Mr. Sol Spires and when I got there Franklin ran up and made mention that he killed this other man.

Q. What did he say, what were his words?

38 A. He first called out something to Mr. Spires about taking him to the Doctor.

Q. Was he shot?

A. He said that he was shot.

Q. What did Mr. Spires do?

A. He went and caught his horse to carry me to *to* the doctor

but he did not go with me, he went over to the house where Mr. Valentine was.

Q. What became of Franklin?

A. He went across the field as hard as he could go.

Q. How was the defendant dressed?

A. He had on his shirt and pants and shoes and hat, everything but his coat.

Q. How long did he stay there talking to Mr. Spires?

A. He did not stay at all he just said that he had killed this man and wanted Mr. Spires to carry him to the Doctor.

Q. How long was he standing there?

A. Only a short while, just about a minute.

Q. What did he say?

A. He called to Mr. Spires and told him that he had killed this other man and that he was shot and wanted Mr. Spires to carry him to the Doctor.

Q. Did he stop there?

A. No sir.

Q. How did he come there?

A. He came up in a run.

Q. Did you run over there, how did you go over there?

—. Yes sir I ran as soon as I could get out of the house and found that I could run.

Q. You did not consume much time in getting there did you?

A. No sir.

Q. How long had you got there when Pink got there?

A. He got there about the time I did, when I got there he was standing by the well.

Q. How many pistols were fired in the house before you got shot?

A. There were three fired and the fourth one hit me and then there was one fired when I went out of the house.

Q. How long after you were out of the house was it that this fifth shot was fired?

A. I don't know that I was out of the house.

Q. How much interval was there between those shots.

A. The first shorts were fired close together, I made it around the house as quick as I could and the fourth shot hit me, it might have been a half a minute before the last short was fired.

Q. Where did you go after you went to Mr. Spires?

A. I went from there to the other Mr. Spires.

Q. Did you see Mr. Valentine again?

A. Yes sir I went back to the house later on.

Q. What condition was Valentine in?

39 A. He was in pretty bad condition, I tried to talk to him but I could not, that was about nine or ten o'clock.

Q. Was he still in the house when you went there?

A. Yes sir he was in the hall of the house.

Q. Did he seem to be suffering?

A. Yes sir he seemed to be in a good deal of misery.

Q. Which doors of the house were open? (diagram).

A. Those two the outside door and the room door.

Q. Where were you when you were shot?

A. He shot me just as I came up here outside this door (room door).

—. Could you see Valentine at that time.

A. I did not see him at all at that time.

Q. Is there any thing else that you know about the matter?

A. No sir I think that is about all.

Q. How many times did Valentine call to the nigger?

A. He called to him five or six times and we knocked and knocked, I reckon that we must have stayed out there five or ten minutes.

Q. How far were you gentlemen from the house when you saw this person on the steps?

A. I reckon that we must have been about thirty steps or may be a little farther than that, about as far as from here to the monument I would say.

Q. What became of him?

A. Who ever it was he got up and went back in the house.

Q. Was it a man or a woman?

A. It was a man.

Q. Could you distinguish who it was?

A. No sir not positively.

Q. How was it that you came to go up there with Valentine?

A. He got me to go, he pressed me in and said that he wanted me to go with him.

Q. Did he get you to go with him for that purpose of identifying the negro?

A. Yes sir he said that he thought that he knew him but he was not positive, that he thought that he had seen him the Sunday before.

Q. Were you there when Valentine died?

A. No sir I was not, it was about ten minutes after seven I heard some one say that he died.

Cross-examination:

Q. When you first saw these people on the steps you were as far as from here to the monument and you say that you saw two people there?

A. Only one.

Q. When you got on the scene you knocked on the steps with your knife three or four times and called four or five times and no one on the inside of the house answered and then you went round to the back of the house or you were sent there to see that no one should get out of the back of the house?

A. Mr. Valentine told me to go round to the back of the house and see if he got out of the window.

Q. When you ran back round to the front door these shots had taken place?

A. Three shots had been fired and the fourth hit me.

Q. When you got on the inside of the house you could not see any one, you could not tell who was doing the shooting?

A. No sir.

Q. Did the fifth shot fire before Franklin left the house or afterwards?

A. It fired before unless he went out of the back door or window?

Q. What time did Mr. Valentine come to your house?

A. About sundown.

Q. He told you that he wanted you to go with him to identify Franklin?

A. He told me that he wanted to spend the night with me and that he had a warrant for Franklin and would get him on Monday.

Q. What time did you and Mr. Valentine leave the house?

A. It was three o'clock when we got up and we knocked around for awhile, I don't know exactly what time it was when we left.

Q. No one hollowed from the inside to you, you said I believe that you heard some one whispering?

A. They were whispering inside before Mr. Valentine went in.

Q. After you went in the house did you go to the bed room door?

A. I don't know whether that was the room that they were sleeping in or not.

Q. Were they in the room that you went to the door of?

A. They were in that room whispering.

Q. Did you have to go in a hall way when you entered the house?

A. We entered the front door.

Q. You did not enter the house, you did not reach that room just as we would enter that vestibule out there, out side of this door here did you?

A. You enter the front room and then turn to get in this other door.

Q. Did you — in that room from the yard, there was a little room there before you got to that room, you did not go into that from the yard?

A. We went in the front door and turned that way.

Q. What is that place right here? (diagram.)

A. That is a little hall.

41 Q. Did Mr. Valentine tell you that he was a constable?

A. Yes sir.

Q. How long had he been a constable to your knowledge?

A. I don't know sir.

Q. Who was the Magistrate that he was constable for?

A. He was constable for his brother.

Q. He told you that he was a constable when he came to your house?

A. He did.

Q. Is this the warrant that he showed you, this paper, is this it?

A. That looks like it.

Q. This is the paper that Mr. Valentine had, you identify this as the paper?

A. That looks like the same one.

Q. In what township was this house, if you know?

A. It was in Willow.

J. I. VALENTINE being duly sworn testifies as follows:

Q. Where do you live?
A. I live in Orangeburg County, Edisto township.
Q. What position do you occupy there?
A. I am Magistrate.
Q. Were you Magistrate on the twenty fifth of last May?
A. Yes I was.
Q. You are still Magistrate?
A. Yes sir.
Q. You know Pink Franklin?
A. I have never seen him to know him.
Q. Did you ever have occasion as a Magistrate to issue a warrant for him?
A. Yes sir I issued two for him, one for stealing and the other for violation of contract.
Q. Will you examine this paper?
A. Yes sir this is one of them.
Q. You deputized your brother on this one?
A. Yes sir.
Q. You lodged this warrant with your brother for execution?
A. Yes sir.
Q. You remember seeing your brother about the twenty ninth day of last July?
A. Yes sir on Mr. Sol Spires place in a nigger house.
Q. Did your brother die there?
A. Yes sir that afternoon about sun down.

Warrant read to the Jury and introduced.

Cross-examination:

Q. How long have you been Magistrate?
A. Three or four years I don't remember exactly.
Q. Who is your regularly appointed constable?
A. My brother was at the time of his death.
Q. Who was the constable of your court prior to this affair?
A. Mr. Grey.
Q. How long did he serve in that capacity?
A. Ever since I was Magistrate till a short while before this tragedy.
Q. How long since had he left you?
42 A. My brother had been constable a month or two before he was killed.
Q. Up to the time of this accident he was the constable of your court?
A. Yes my brother was and had been for a month or so previous the constable for my court.
Q. State to the Court and Jury what townships constitute your circuit?
A. Union and Edisto.
Q. Did you know at the time you issued this warrant what township the defendant lived in?

A. I did not know of my own knowledge, but I suppose that it was in the upper end of Union or the lower part of Willow.

Q. Can you make an arrest in any district except your own, you can't make an arrest in any other Magistrates district can you?

A. As I understand it, I can make an arrest anywhere in Orangeburg County.

Q. You don't know anything about the accident do you?

A. When I got to the place my brother was down after being shot, I was not there when the shooting occurred.

Q. All you know is that he was sent and went to arrest Franklin?

A. He went to arrest Franklin and the warrant that he had was for violation of Contract.

Q. Does J. D. Thomas live in your jurisdiction?

A. Just about the line between Union and Edisto.

Q. He lived in your jurisdiction?

A. Yes sir.

SOL. SPIRES being duly sworn testifies as follows:

Q. Where do you live Mr. Spires?

A. In Orangeburg County.

Q. Over in Fork?

A. Yes sir.

Q. Do you know Pinkney Franklin?

A. Yes sir.

Q. He lived on your place in last July?

A. Yes sir on my brother's place.

Q. Does that place join yours or not?

A. Yes sir it does.

Q. How far is the house in which Franklin and his wife lived from your residence?

A. It is about three or four hundred yards.

Q. It is in sight is it?

A. Yes sir.

Q. Did you know Henry E. Valentine?

A. Not till that morning when he came to my house.

Q. He was a stranger to you until that morning?

A. Yes sir.

Q. Did you know Mr. Carter?

A. Yes sir he is my brother-in-law.

Q. What time did these gentlemen come to your house?

A. They got there just about day break?

Q. Did they *are* not get you to do anything?

43 A. Yes sir they did.

Q. What did they get you to do?

A. They got me to go and find out where Franklin was and get him to come up to my house.

Q. For what purpose?

A. So they could arrest him.

Q. Did you at their request go?

A. Yes sir.

Q. Did you find Franklin at home?

A. Yes sir he was there.
Q. Was his wife there with him?
A. I don't know that.
Q. Who did you see when you went there.
A. No one but Franklin himself.
Q. Did you have any talk with him?
A. Yes sir I asked him to come over and plow for me that morning and he said that he would come at noon but he had to go off that morning.
Q. Did you call to him when you went there?
A. Yes sir.
Q. Was he dressed?
A. It was a little dark but I think that he had his pants on and he did not have on his shoes.
Q. Did he come to the door?
A. Yes sir he came to the door and opened it and I asked him about coming over to plow for me that morning and he put me off and said that he would come over at noon but that he had to go off that morning, I went back home and told Mr. Valentine what he had said and we had a few words there and Mr. Valentine said to Carter lets you and I go and get him and they walked off and left us standing there, we walked on in the house and then my brother went on back home.
Q. What did you do?
A. I went round the dining room and went up on the piazza, I was standing there when I heard the shots.
Q. How close were they shooting, was the shooting right together?
A. The fires three or four were close in succession and a second or two apart.
Q. How about the last shot?
A. I suppose it was nearly a half minute before that.
Q. What direction was the shooting in.
A. It was toward Franklin's house.
Q. What happended next?
A. I started to go down there and see what the trouble was and I got out of the yard and saw Carter coming to the house running.
Q. Then what happened?
A. He hollowed to me that he was shot and to carry him to the doctor and I turned to go to the shed and got my buggy out and hitched up and started to carry him.
Q. Did you see anything of Franklin?
A. Yes sir just as I came out with my horse I saw him.
44 Q. How long after Carter got there was it till Franklin came?
A. Just about a minute I reckon.
Q. What did he do then?
A. He went over to where Carter was talking to my wife and they had some words and Franklin said something to me about carrying him to the doctor, and I don't think that I made him any answer.
Q. Did anyone ask him about who he had shot?
A. Yes sir he said that he had shot a man and did not know who

it was, I asked him where was Valentine and he said that he had shot him.

Q. Franklin came up to your house?

—. Yes sir he did.

Q. Did he go off running?

A. I don't know when he went off.

Q. Do you know whether he was charged with having violated a contract or not.

A. Not to my own knowledge he was not, he told me that he was.

Q. He told you that he was resting under that charge?

A. Yes sir.

Q. What did he say about being arrested under it?

A. He did not say anything, I told him that if anyone came to arrest him to submit to it.

Q. Do you know whether he had any fire arms in his house?

A. I have seen him with a pistol.

Q. When was that?

A. I have seen him several times.

Q. When did you see him with a pistol?

A. Occasionally when he was working for us.

Q. When you went to his house on the morning that Mr. Valentine was killed did he have a pistol in his hand then?

A. I did not see it if he did.

Q. Did you not state that he came to the door to meet you with a pistol?

A. Not that I remember sir.

Q. You don't remember saying that?

A. No sir.

Q. Did you not say that he met you with a pistol and you thought that you would let Valentine find it out for himself?

A. No sir I did not.

Q. Do you know what kind of a pistol he owned?

A. No sir I never examined it.

Q. Where had Franklin worked prior to 1907.

A. With my father and my brother.

Q. How far was Mr. Thomas' place out of your neighborhood?

A. I suppose about twelve miles.

Q. When did Franklin move down there?

A. He went the same time last fall.

Q. He stayed down there just about a half a year?

A. Yes sir.

—. Who moved him back up on your place?

A. My brother's team moved him.

45 Q. Was he hired to any one when he moved back up on your place?

Objection. Irrelevant.

Overruled.

His Honor: I will allow the testimony.

Q. Was Franklin regularly employed after he moved back up to your neighborhood?

A. No sir not that I know of.

Q. Where was he working?
A. He was working all about at odd jobs, Mr. Thomas asked me to keep him there till he got ready to send for him.
Q. He did not work for your brother did he?
A. No sir I don't think so, he worked some for me.
Q. Is there anything else that you know that will throw any light on the transaction?
A. No sir.
Q. Do you know who Franklin got that pistol from?
A. Yes sir he got it from my brother.
Q. When was that?
A. About a year and a half ago.

Cross-examination:

Q. What township did Franklin live in?
A. Willow.
Q. Did you see Mr. Valentine at any time before the accident?
A. I never was acquainted with any of them but Joe Valentine.
Q. Franklin would work when he was called on to work, would he not?
A. Yes sir.
Q. You would not consider him a loafer, would you?
A. No sir.
Q. At what time was Franklin working for Mr. Thomas?
A. Some time in the Spring of this year, as well as I remember.
Q. When did he leave Mr. Thomas?
A. I don't remember.
Q. Did he work with him as long as a month?
A. I think he was with him several months.
Q. How long would you say it was from the time Franklin left Mr. Thomas till the time these gentlemen came to your house to serve this warrant?
A. About a month and a half, I guess.

TONY JERRY, being duly sworn, says:

Q. Where do you live?
A. On Mr. Spires place.
Q. Do you hold any official position in your church over there?
A. I'm only sexton sir, I am not a member of that church.
Q. Where did Pink Franklin live in last July?
A. Right in sight of the church.
Q. You knew him, did you?
A. Yes sir.
Q. Did you ever talk with him about being arrested?
A. Yes sir we were talking *it about* in the field before the
46 killing occurred.
Q. What did he say to you about being arrested?

Objection—No foundation laid.
His HONOR: If the declaration is relevant, you may bring it out. If it is irrelevant I will instruct the Jury to disregard it.
Q. What did Franklin tell you about being arrested?

A. I heard him say that no one man could arrest him.

Q. Did Franklin come to your church the night before Valentine was killed?

A. Yes sir.

Q. What was his conduct?

A. He came to the church and had on no coat, and his pistol in his vest pocket. I saw the pistol and told him that he ought not to have the pistol on the church grounds. He walked away and went to *to* the well and drew a bucket of water, when he got down there a short time, I heard the pistol fire over in the direction of his house.

Q. How far is it from the church to Franklin's house?

A. Just about two hundred yards.

Q. That was on Sunday night before Mr. Valentine was killed?

A. Yes sir Mr. Valentine got killed on Monday morning.

Q. Where did he have his pistol?

A. In his vest pocket and did not have on any coat.

Q. He came there on the church grounds and you ran him off?

A. Yes sir I told him that it was not right to have a pistol on the church grounds and he went off then to the well and I heard him draw a bucket of water and he went on to his house then and I heard the pistol shot.

Q. Do you know anything about Mr. Valentine being killed?

A. No sir I was roused by the noise this woman made hollowering some one has shot me.

Q. What is her name do you know?

A. Her name is Patsy Franklin, they call her Sad, that is the name she goes by that is what they call her for a nickname.

Q. What do you know about the killing?

A. I don't know, this woman came down to my house and said this man shot me but she never said who it was that shot her.

Cross-examination:

Q. You are the sexton of this church?

A. Yes sir.

Q. How long have you been living there?

A. I have been over there about fifteen years.

47 Q. Where did you go after this man was killed there?

A. I didn't go anywhere, I was home.

Q. Have you had any trouble out there since this killing?

A. I was taken and brought to jail, that was the only trouble.

Q. You were taken and brought to jail?

A. Yes sir.

Q. Did you have any talk with anyone out there?

A. No sir, I never had any talk.

Q. Did you have any talk with anyone out there in that community?

A. No sir?

Q. You were never up about that killing?

A. No sir.

Q. What did they bring you to jail for?

A. I don't know what they brought me for, I had nothing to do with the killing.

Q. Were you scared when they took you to jail?

A. Yes sir for that was about the first time I had ever been there. I was a little scared.

Q. Where were you when that whipping took place out there?

A. I was home, I was in jail when the whipping was done at Cope.

Q. Were you afraid to go back home, weren't you afraid that they would whip you?

A. They didn't whip me sir, I only got one lick.

Q. What was that for?

A. I don't know for what, I know that I got it.

Q. Go over the people you have talked to about this matter and tell what you have said to them? Do you belong to the church out there?

A. I am a member of the church, I am not a member of the church out there I am a member of the church at Denmark.

Q. Do you realize that in this case the life of one of your fellow men is at stake?

A. Well I am here to testify to the truth and am put on my oath and I *consider* to tell the truth.

Q. Are you aware of the fact that if you tell the truth that something will happen to you if you go back out there?

A. I am telling the truth.

Q. Are you aware that if you talk too much something will happen to you?

A. I am talking of what I know to be the truth.

Q. Are you in any — afraid that anything will happen to you if you talk too much?

A. I am not afraid that anything will happen to me for I am telling the truth.

J. H. EASTERLING being duly sworn testifies as follows:

Q. Where do you live?

A. In Orangeburg County.

Q. Near where Mr. Valentine met his death?

A. Yes sir.

48 Q. About how far from where he was shot?

A. About a half a mile I suppose.

Q. When did you first hear of the affair?

A. It was about an hour after it first occurred.

Q. Did you go down there to the scene of the shooting?

A. Yes sir I did.

Q. Did you see Mr. Valentine?

A. Yes sir.

Q. What was his condition when you saw him?

A. He seemed to be suffering very much.

Q. Were you the first person to reach him?

—. No sir.

Q. What was the condition of Valentine's mind, he was rational and sensible was he not?

A. I couldn't detect anything wrong with his mind.
Q. Did he have any hopes of life?
A. He did not sir it did not seem, he said that he was fatally shot and led me to believe that he was shot fatally.
Q. Did he make any statement as to how he was shot?

Objection to any introduction of a dying declaration as the deceased was not "in extremis" at the time the statement was made if such was made to the witness.

Q. Mr. Valentine was suffering intensely was he not?
A. Yes sir he had had a hemorrhage.
Q. Did he or not rally from that?
A. Yes sir when I asked him about this declaration he had just taken some physic and was a little sick from the effects of that.
Q. From his condition as he stated it to you and from what he said to you did he have any hopes of life?
A. He did not sir.

Objection.
HIS HONOR: The question is competent.

Q. Did he tell you how his wound would terminate?
A. He did indirectly, he said that he knew that he was shot fatally or thought so and that he was in a bad fix.

SOLICITOR: I think that lays the foundation your Honor. If a man says that he is fatally shot, I think that will be a sufficient foundation.
Objection. Overruled.

Q. Now you can go on and tell the conversation that you had with him.
A. I asked him if he wanted to make a declaration and he said that he was too sick and that he would tell me a little later, I asked him why he did not shoot the darkey, and he said that he could not, that he went to the door and rapped on it and got no response and he walked in the door, he said the light coming in the door was in the room and that he saw no one, just as he walked in the door
49 he said that Franklin shot him and I asked him then why he did not use his gun, and he said that he could not, that they grabbed him and rung the pistol out of his hand. I asked him who shot the woman and he said that if she was shot, that Franklin did that, he did not shoot at all, I asked him how it was that they came to take the pistol away from him and he said that the shock from the effect of the shot was so great that they took the pistol away from him before he could recover, they took it away from him before he could recover and while he was suffering from the effect of the shock from the wound.
Q. Did you ever find the pistol?
A. No sir not Valentine's pistol.
Q. Did they find Franklin's?
A. I don't know that they found the other one.

Cross-examination:

Q. Were you present when Mr. Valentine died?
A. I had just left.
Q. What time did he die?
A. I suppose that he died about seven or seven thirty.
Q. What time did you leave there?
A. I suppose that I left there an hour before he died.
Q. You had the last conversation with him?
A. I don't know, they talked to him during the day and I can't tell what they said to him after I left there.
Q. He did not know what he was talking about when you left?
A. I don't know that sir.
Q. What was the condition of his mind?
A. I don't know.
Q. Was he intelligent when he was talking to you?
A. I don't know how he was when I left there, I did not talk to him, the conversation that I had with him was in the forenoon, he died in the afternoon.
Q. Your conversation with him was in the forenoon and you did not have anything to say to him for two or three hours before he died?
A. That is right.
Q. Who was present at the time that he had this conversation with you?
A. I don't remember but one or two that were there, he was lying on a mattress in the house at the time, and I think that Mr. Jeffcoat was one that was there and heard it. He was pretty close to me and I suppose that he heard it, I can't name every one that was there at the time, they were coming and going all the time, I would not attempt to name all that were there.
Q. Will you state to the jury that the conversation that the deceased had with you was every word that he had to say?
—. I don't know that, he might have talked with some one else, I asked him questions that did not concern this matter.
Q. Was that all he had to say to you about it?
A. That was all he had to say at that time.
Q. Did he loose his speech at any time before you left there in the afternoon?
A. I did not try him to see, as I told you I did not talk to him for two or three hours before he died.
Q. When you left him did he have the power of conversation?
A. Yes.
Q. Did he have anything to say to you when you came back in the afternoon after you went home?
A. No, nothing to say.
Q. Were the people who were present when he made this declaration to you in the forenoon close enough to hear what he was saying?
A. I don't know that.
Q. What time do you mean by the forenoon?
A. Any time before twelve o'clock.
Q. What time did Mr. Valentine die?

A. He died about sundown, so I was informed.
Q. What time did you leave the house where he was?
A. About an hour before he did die, I was on the ground there, I was not in the house.

Attorney ADAMS: Does your Honor hold that the declaration is competent?
His HONOR: I hold that it is competent and overrule your objection.
Exception noted.

WALTER HUTTO being duly sworn testifies as follows:

Q. Where do you live?
A. I live in Willow township, this county.
Q. Did you know Henry E. Valentine prior to his death?
A. Yes sir I did.
Q. Did you see him about the twenty ninth of last July on Monday morning?
A. Yes sir.
Q. Where was it that you saw him?
A. In the house that Franklin had lived in.
Q. How far do you live from this house?
A. I suppose it is about three quarters of a mile.
Q. Did you hear the shooting that morning that he was killed?
A. Yes sir.
Q. Did you get up?
A. Yes sir.
Q. Did you go over there where the shooting was?
A. I went over there sir.
51 Q. What did you find when you got over there?
A. I found Sol Spires and Mr. Valentine and a little negro boy that Mr. Sol Spires had hired.
Q. Did you go in the house?
A. Yes sir.
Q. Where did you find Mr. Valentine?
A. He was by the door out in the hall of the house, I call it the hall of the house it was out by the door.
Q. This is said to be a description of the house where would the hall be?
A. I suppose that would be the hall, that room there (diagram).
Q. This is the front door here?
A. Yes sir.
Q. Where was it that you found Mr. Valentine?
A. If this is the hall here he was sitting pretty much in front of the door here that came out from the back room, there was a partition in the house and Valentine was about in this position, this direction, from the door, he was right about in this direction from the door.
Q. Is this the room that you call the hall of the house?
A. Yes sir.
Q. The main room of the house?
A. Yes sir that was where people entered.

Q. How was he sitting or standing or lying?
A. He was in this shape on the floor (illustrate).
Q. Were there any chairs in the room?
A. There were two or three chairs in the house.
Q. They were what kind of chairs?
A. I did not notice whether they were cane bottom or not.
Q. Were they arm chairs?
A. I did not notice.
Q. Did you talk with Mr. Valentine or not?
A. Yes sir I did.
Q. What was his condition at the time you talked with him?
A. He told me that he was shot by Franklin and was in a dying condition.
Q. Did you offer to do anything for him?
A. Yes sir he said that he wanted some water on his head and Sol Spires poured some water on his head and wiped it off for him.
Q. Did he or not at that time have any hope of life?
A. No sir he said that it was a death shot.
Q. Did you stay with him any time or not?
A. Yes sir I stayed with him till quite a big crowd gathered there.
Q. Did he tell you the circumstances of the shooting?
A. No sir he told me that Pink Franklin shot him.
Q. Tell the jury what he said to you?
A. He told me that he shot and that it was a death shot, and after being there a short time he pulled off his watch and said to
52 me take my watch I will have no further use for it. I got a chair and turned it down and let him lie on it so as to make it more comfortable for him, and I asked him then if he wanted a doctor, and he said that he did and I and Mr. Spires concluded to send for a doctor, and after he left the house to send for the doctor I suppose that he came to the conclusion that he had better send for some of his people and I asked Mr. Valentine then if he was married or single, and he said that he was single and I asked him if he wanted me to send for his people, and he says yes to send for Joe his brother and I sent for him. He said that after he was shot that Franklin wrung the pistol out of his hand and that he did not fire a single shot, he said that Franklin did the shooting, and that after he was shot that a colored woman came in there with an axe and said that she had a good will to finish up the job, but that she did not finish it and he did not know why she did not.
Q. Did she say whether she struck him with the axe or not.
A. No sir he did not say, he said that she came in with the axe and said that she had a good mind to finish up the work and he did not know why she did not finish it.
Q. Did he say who that was?
A. No sir he did not say, he said that it was a black woman.
Q. Did he tell you whether he fired or not?
A. He said that he did not fire a time.
Q. Did he say what became of his pistol?
A. He said that Pink took it from him, he said that he went in the front part of the house and entered the room and as he entered

the room Pink shot him that way in the back part of the house in the back room.

Q. He shot him just as he entered the room?
A. Yes sir.
Q. What did he do then?
A. He took his pistol from him.
Q. Did he tell you how many shots were fired?
A. No sir.
Q. Did he tell you whether he did any of the shooting?
A. He said that he did not shoot a time.

Cross:

Q. Was that all that Mr. Valentine said when he said that?
A. This was all I heard him say about the shooting.
53 Q. You have given every word that you heard him say?
A. As far as I know I have.
Q. You don't know whether he said anything else after you left or not?
A. I am just giving you what I heard him say.
Q. What time did you leave him, what time did he make this declaration?
A. It was sometime after sunrise, I got there about sunrise and the shooting took place about daylight.
Q. It was before twelve o'clock?
A. Yes sir.

The state rests.

PINKNEY FRANKLIN being duly sworn testifies as follows:

Q. Your name is Pinkney Franklin?
A. Yes sir.
Q. Do you remember the night in the latter part of last July when there was a difficulty at your house?
A. Yes sir.
Q. Did Mr. Sol Spires come to your house any time that morning before day?
A. Yes sir he came there and wanted me to work for him that day and I told him that I would come that afternoon.
Q. After he came there and told you that did you go outside the house?
A. Yes sir I had to go out on private business.
Q. Let us know about that what was the nature of it, you had to go out to relieve yourself?
A. Yes sir and then I went back and went to bed.
Q. Did you see anyone out there?
A. No sir not a soul.
Q. You then went back and went to bed?
A. Yes sir.
Q. Did you fasten the door behind you?
A. Yes sir.
Q. Did you hear anyone on the outside?
A. No sir.

Q. Who was in the room when you went back in there?
A. No one but my wife and little boy.
Q. Did you talk with your wife when you went back in there?
A. Yes sir I started to talk with my little boy.
Q. Did you hear any knocking at the door?
A. No sir I did not hear anything till the door was hurled open and he came on in and busted the room door open and he said to me hands up and I did not move and he up and shot me and I fell down by my pallet when he shot me and I got my gun and fired intending to get out of the way and I got out as fast as I could.
Q. Where did he hit you?
A. Through the shoulder here.
Q. Will you show us where it is?
54 A. Yes sir (Shows the Jury a bullet wound in the right shoulder.)
Q. Did this man shoot you before you shot?
A. Yes sir.
Q. Did he shoot at the time that he said hold up your hands or did he wait?
A. He never waited a second.
Q. Did you have time to get up your hands?
A. No sir I did not.
Q. If you had had time would you have surrendered?
A. Yes sir.
Q. Did you know that he was an officer of the law?
A. No sir I did not have any idea who it was.
Q. Did he say he was a constable?
A. No sir.
Q. Could you see him?
A. No sir it was too dark.
Q. Why did you take his pistol from him, did you do that, he said you did, did you?
A. No sir.
Q. When you shot what did you do?
A. I ran out of the room and picked up his pistol on the floor, I thought it was mine, it hurt my foot and I reached down and picked it up and poked it in this same pocket and went on, I never noticed the pistol whose it was, till I went on a piece and I met up with two men and they said to me you look like you are in trouble and I told them yes I was shot and they said well you come on back with us and they took the pistol from me, I went on back a piece with them and then I turned off and they went on about their business.
Q. It was dark?
A. Yes sir.
Q. You could not see anyone?
A. No sir.
Q. You did not recognize the persons at all?
A. No sir.
Q. Would you have known Mr. Valentine if you had seen him?
A. No sir I would not know him if I saw him now.

Cross:

Q. You know that you had killed him?
A. No sir I did not know.
Q. You knew that you shot him?
A. No sir.
Q. How many times did you shoot?
A. I shot twice.
Q. Who shot your wife.
—. I don't know sir.
Q. Did you not tell a man in Columbia that if your wife was shot that you must have shot her?
A. No sir I did not.
Q. What did you tell him?
A. I told him that they said that I did.
Q. Who was it that told you that?
A. Mr. Mayfield said that he heard it.
Q. He was the man that arrested you was he not, he was the man that turned you over to the sheriff?
55 A. No sir he was the man that told them to come for me.
Q. Did you not get in Mr. Mayfield's buggy and ride with him?
A. Yes sir I came a little piece with him.
Q. Did he not arrest you?
A. No sir he never said so.
Q. He told you to come on and get in the buggy with him?
A. Yes sir.
Q. You knew Mr. Mayfield did you?
A. Yes sir.
Q. He saw you along by the road and demanded that you come on and get in the buggy with him?
A. He said that he would take care of me and send me home.
Q. The next man that came for you was Sheriff Dukes, did he arrest you?
A. No sir, he took me on just the same as if he arrested me.
Q. He did not tell you that he had come for you?
A. He said come on Franklin.
Q. When you — to the Penitentiary in Columbia did you not tell the reporter down there that if your wife was shot that you must have shot her?
A. No sir I said that they said that I must have shot her.
Q. Was your wife shot?
A. Yes sir.
Q. Where was she hit?
A. She was hit in the arm here, that is what she said.
Q. Did you have on your clothes when the shooting was done?
—. No sir I did not have them on.
Q. You were undressed?
A. Yes sir.
Q. How did you get dressed so quick after the shooting?
A. I put them on outside, I put them on in a little cornfield down there.

Q. What did you put on there?
A. I put on my shoes and pants.
Q. You had on your shirt?
A. Yes sir.
Q. Did you tie your shoes?
A. Yes sir I tied them.
Q. Then you ran on down to Spires' house?
A. Yes sir.
Q. How fast did you run?
A. As fast as I could sir.
Q. Do you know Mr. Kleckley?
A. Yes sir I know him.
Q. Did you see him after they carried you to the Penitentiary?
A. Yes sir.
Q. Did you or not tell him that you fired three or four shots in the house and that if she was shot, if your wife was shot that one of those shots must have hit her?
A. No sir I told him that I shot, but I don't know how many times I told him that I shot.
Q. You don't remember telling the newspaper man how many times you shot?
A. I told the newspaper man that I shot twice.
Q. Do you or not deny telling him that you shot three
56 or four times in the house and that if your wife was shot that you shot her?
A. No sir I don't remember telling him that.
Q. You deny telling him that?
A. Yes sir.
Q. What kind of a pistol did you have?
A. I think it was an Iver Johnson.
Q. Where did you get it?
A. I bought it from Mr. Spires.
Q. When did you buy it?
A. About a year and six or seven months ago.
Q. How many pistols did you carry off that morning?
A. I did not carry but that one.
Q. You did not carry off but one?
A. I carried two of them.
Q. You carried off Mr. Spires', Mr. Valentine's pistol, why did you carry that one off?
A. I did not know whether that one was mine or not I never looked at — and thought that it must be mine.
Q. Where did you leave your pistol?
A. At my brother-in-law's house.
Q. Why did you carry off the dead man's pistol?
—. ——.
Q. What did you do with that where did you leave it?
A. I carried it with me till I met those two men and they told me I looked like I was shot and they commenced looking at me and took it away from me and told me to say what was the matter with me.
Q. Did that pistol have anything in it?

A. No sir it was empty.
Q. Who did you give it to?
A. One of those men took it out of my pocket.
Q. Did you ask him for it?
A. No sir when I got a little piece off I asked them for it and they would not give it to me and I went with them a little piece and jerked loose from them and ran off.
Q. Why did you do that?
A. I was scared of them.
Q. Did you tell Sol Spires that you had killed a man?
A. No sir I told him that I had shot.
Q. Did you not hear him say that you told him that you had shot the man?
A. I reckon he must have misunderstood me.
Q. Did you string your shoes up?
A. Yes sir I just hooked them round.
Q. You had them tied?
A. Yes sir.
Q. When you shot this man how were you standing?
A. I was standing just this way (crouching).
Q. He was outside in the hall wasn't he?
A. No sir he was in my bedroom.
Q. How did you hold the pistol when you shot him?
A. This way (in his left hand),
Q. Which hand do you shoot with?
A. My right hand.
—. You are a right handed man?
A. Yes sir.
57 Q. How did you shift the pistol, how did you hold it?
A. I held it in this hand. (Left.)
Q. What position were you in when this man shot you?
A. I was standing up this way.
Q. I thought that you were in the bed?
A. No sir I had got up.
Q. Point it at me as you did him?
A. This was the way, I was standing like this.
Q. How many times did you pull?
A. Two times.
Q. How many times did the man shoot you?
A. I don't know sir it was just popping like fire crackers.
Q. What was your wife doing?
A. She was gone when I got out.
Q. Who did Mr. Valentine hit first your wife or yourself?
A. He hit me first because I got up first.
Q. Did your wife go out of the front door or the back?
A. I don't know sir.
Q. Do you remember this other man coming in there?
A. I don't remember him coming in.
Q. Do you know that you shot him?
A. No sir.
Q. Did you not follow him out of the house?
A. No sir when I got to Mr. Spire's I found him there.

Q. Did not he run to Mr. Spire's house and did you not run behind him and tell him that you did not mean to shoot him?

—. No sir I did not.

Q. Was not Mr. Carter running as fast as he could?

A. I did not tell him that though and when I got to Mr. Spire's he said did you intend to shoot me.

Q. Did you not tell him that you did not intend to shoot him that you were one of the best friends that he had?

A. Yes sir I told him that I did not shoot him that I did not see him.

Q. Did you tell him that you did not intend to shoot him that you did not know that he was any where about?

A. No sir I told him that I did not shoot him and he said that if he did think so that he would kill me now.

Q. Were you not working for Mr. Spires?

A. Yes sir.

Q. Were you not under contract to J. D. Thomas?

A. Yes sir.

Q. You broke that contract did not you?

A. I did not break it, I left on account of the terms we were on.

Q. When you left up there who hauled off your things from Thomas' place.

A. Some of my things are down there yet as far as I know.

Q. You and your wife came off from up there and went on Mr. Spires' place in that house down there?

A. Yes sir.

58 —. Did not Mr. Spires send a wagon down there for a part of your things?

A. Yes sir he got a portion of them.

Q. Did not Mr. Thomas keep them from taking the balance?

A. Yes sir he said they must not move them.

Q. You knew at the time that Mr. Valentine came there to your house that you were resting under the charge of violating a contract?

A. I knew that I had quit him.

Q. Do you know this old sexton up there at the church?

A. Yes sir.

Q. Were you there at the church the night before you shot Mr. Valentine?

A. Yes sir.

Q. Did you have a pistol?

A. No sir it was right at my house.

Q. You did not have a pistol at that church in your vest pocket?

A. That is one thing I never did do, I never wore a vest in my life.

Q. You had a pistol there at the church?

A. No sir it was at my house then.

Q. Didn't that old nigger run you off the church grounds?

A. No sir he always told me to go in the church and not to stay outside.

Q. Did you ever tell him that no one man could arrest you?

A. No sir I never did tell him that.

Q. You deny telling him that?
A. I never did tell him that.
Q. Mr. Mayfield arrested you didn't he?
A. Yes sir.
Q. Where did you go after you left Mr. Spires' house that morning?
A. I took the branch and crossed the river and went down the railroad and over to Mr. Mayfield's place.
Q. Didn't you know that that whole country round there was looking for you?
A. No sir.
Q. Did you not tell some one that you were lying right by the road when they were looking for you?
A. I told Mr. Mayfield that when I found that they were looking for me.
Q. When the old sexton ran you went home then?
A. No sir I did not leave there till the meeting was most over.
Q. When you got home to your house you did some shooting didn't you?
A. Yes sir when I got home there was a dog there and he tried to bite me and tried to follow me in the house and I shot him. The dog belonged to Lew Johnson.
Q. How many shots were fired in your house that morning?
A. I couldn't count them they were so many.
Q. You don't know the name of that nigger that took your pistol from you do you?
A. No sir I don't know him.
59 Q. Where was that?
A. Right below Denmark, on the S. A. L.
Q. What made you go way over there?
A. I was scared and was getting out of the way.
Q. You met a good many people on your route didn't you?
A. No sir.
Q. You did not see many?
A. No sir.
Q. Did you meet Jack Tyler?
A. No sir.
Q. How about Caesar Rowe?
A. I did not see him.
Q. How about Ellen Rush?
A. I don't know him.
Q. How about Nathan Tyler?
A. No sir.
Q. Joe Rowe?
A. No sir.
Q. Mannie Parler?
A. I don't know any one by that name.
Q. Ella Fair Morgan?
A. No sir.
Q. Francis Stroman?
A. No sir.

Q. What was the first point you made when you left house that morning, who was your brother-in-law that you went to?
A. I just passed by his house.
Q What was his name?
A. Jack Tyler.
Q. Did you talk to him?
—. No sir.
Q. How about Cæsar Rowe, isn't he your brother-in-law? *A*. How about Cæsar Rowe didn't you see him?
A. Yes sir you see they went along with me.
Q. You did not meet them they went along with you?
A. Yes sir.
Q. Did any one of the others go with you?
A. Yes sir they went with me I did not meet them.
Q. Did you see those other people?
A. Yes sir.
Q. Who did you see?
A. Cæsar Rowe and Jack Tyler.
Q. You gave Jack the pistol?
A. Yes sir, I left it at his house.
Q. You parted with the pistol at his house?
A. Yes sir he came there after I got there.
Q. Whose pistol was it that you left there?
A. It was mine so I learnt.
Q. Did you not give Tyler one pistol and you kept one?
A. No sir.
Q. Didn't you give the oher pistol to Cæsar Rowe?
A. No sir.
Q. Did he take it from you?
A. No sir.
Q. How did he get it the —?
A. I don't know.
Q. Who got the pistol from you?
A. Those men took it from me.
Q. How did they come to take it?
A. I don't know they just took it.
Q. Who did you give the money to buy bullets?
A. I did not give any one the money.
Q. Did you send anyone to get bullets?
A. No sir.
—. Did any one go to get them for you?
A. No sir.
Q. Did you give any one fifteen cents to go and get bullets for you?
A. No sir I did not.
Q. You never got any bullets then?
60 A. No sir I never had any.
Q. Did you have a pistol when Mayfield arrested you?
A. No sir them folks had took it from me.
Q. You had it up to then?
A. Yes sir.

Q. Whose pistol was that?
A. I don't know, it wasn't mine, it was this man's I reckon.
Q. When did you look at this pistol?
A. When these men took it from me was the first time I looked at it when it was in *in* their hands.
Q. Who else did you see?
A. No one but those fellows that went along with me, Jack Tyler and Ned Tyler and Jerry and Rowe.
Q. You deny that you met them?
A. They came up with me.
Q. How did they catch up with you if you were running?
A. They went round the road.
Q. They were your friends didn't they help you to run away?
A. No sir.
Q. Where did you get your breakfast that morning?
A. I didn't get any.
Q. Where did you get your dinner that day?
A. No sir I didn't get any.
Q. How about supper?
A. I didn't get any supper.
Q. Where did you get your breakfast the next morning.
A. I did not get any sir.
Q. Where did you get your dinner?
A. I did not get any dinner I got a piece of bread from a man by the name of Stoman?
Q. Did you tell him your trouble?
A. He began to ask me about it he asked me what was the matter I was so bloody.
Q. Where did you get your supper that night?
A. At Mr. Mayfield's.
Q. At whose house did you get your supper?
A. At Mr. Mayfield's house.
Q. In his residence?
A. Yes sir.
Q. Did he know it?
A. Yes sir.
Q. Was that the time that he arrested you?
A. Yes sir.
Q. He arrested you and took you over to his place and gave you something to eat?
A. Yes sir.
Q. What did the sheriff do with you?
A. He took me on the train and took me to Columbia.
Q. They have had you up there ever since?
A. Yes sir.
Q. Did you go to a root-doctor to get something to put on your feet to get the dogs from running you?
A. No sir.
Q. Did you get any turpentine to put on your feet because you heard that that would keep the dogs from tracking you?
A. No sir I never got a bit.

Q. Did you ever heard that you could put something on your feet so that a dog could not track you?

A. Yes sir Uncle Joe Green was telling me about that
61 when I was in the hospital.

Q. What was he doing up there?

A. He was a waiter on the sick people.

Q. What did he tell you?

A. He said that he knew something that you could put on your feet and the hounds couldn't run you.

Q. You mean to say that you deny that you tried to get something to put on your feet to keep the dogs from running you?

A. No sir I am telling you the truth about that.

The Defense Rests.

In Reply.

FISHER KLECKLEY being duly sworn testifies as follows:

Q. You know the defendant Franklin?

A. Yes sir.

Q. Did you or not see him in the Penitentiary after the shooting of Henry Valentine?

A. Yes sir.

Q. Did you have a talk with him?

A. Yes sir.

Q. Did he or not tell you that if his wife was shot that he must have shot her? *Q.* Did he or not tell you that he fired three or four times?

A. He said that Valentine fired three or four times?

Q. He told you that if his wife was shot that he must have shot her?

A. Yes that he did not hear any outcry till after he shot.

Mr. CARTER recalled testifies as follows:

Q. When you approached the house on the morning that Mr. Valentine was shot you said that you saw some one sitting on the steps of the house, when he went in the house did he close the door?

A. No sir both of the doors were open and we stood right by the door and knocked and called his name several times and he did not answer.

Q. Could you see the bed room door?

A. Yes sir.

Q. What kind of a pistol were you shot by?

A. A thirty eight.

Q. What calibre was Valentine's pistol?

A. I don't know what it was.

State Closes.

Attorney Adams moves that His Honor direct a verdict in favor of Sad Franklin and also a verdict in favor of Pink Franklin on the following grounds:

62 Now come John Adams and Jacob Moorer Esqs. Attorneys for the Defendant herein and move this Honorable Court to direct a verdict of not guilty in the above entitled case on the grounds: That the warrant under which the deceased attempted to arrest the defendant was null and void, since the act under which it is issued is contrary to the Constitution of the State of South Carolina, being in violation of Article 1, and section five. of said State Constitution.

The language of the Constitution of the State of South Carolina herein referred to is as follows:

The privileges and immunities of the citizens of this state and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life liberty or property without due process of law, nor shall any person be denied the equal protection of the law. The Defendant in this case is a negro and in order to make an unbroken argument on the issues herein raised it becomes necessary at this point to ascertain whether or not that race of people is considered citizens of the State of South Carolina and the United States. This is settled we submit by the thirteenth and fourteenth amendments of the Constitution of the United States.

The undisputed testimony in this case is that the deceased went to the house of the defendant in this cause with the intention of arresting him for making a violation of the labor contract law of the State of South Carolina Section three fifty seven of the Criminal Code of 1902, Vol. 2. Relating to the Violation of laborers contracts, as amended by an act entitled" An Act to Amend Section 357 Criminal Code of Laws 1902 Vol. 2. relating to the Violation of Laborers Contracts, approved the 25 day of Feb. A. D. 1904 is the Law claimed to be the law under which the warrant that the deceased proceeded to arrest the Defendant at Bar was issued and which the movers claim in no unmistakable terms to be contrary to the Constitutional requirement of the State of South Carolina and therefore unconstitutional.

It is further unconstitutional in that it Violates the constitution of the United States Article IV and is also repugnant to and

63 in violation of the thirteenth and fourteenth Amendments to the Constitution of the United States.

We recognize the fact that in the case of The State v. Chapman 56th S. C. page 420 that His Honor Judge McIver passing on this section of the Code together with the Amendment thereto declared it to be Constitutional, and we submit that if this decision of His Honor Judge McIver has not been interfered with by any Court whose Jurisdiction is higher, then the Constitutionality of the law herein refer-ed to is established But, this Court we are sure will recognize that recently this whole matter has come forward to be reviewed by His Honor Judge Brawley of the United States District Court. In a very learned decision handed down May 1907 and Reported in the Advance Sheets of the Federal Reporter, Aug. 15th,

1907, in a case entitled ex parte Drayton, et al. the learned Judge claimed section 357 of the Criminal Code as amended by the Act of 1904 contrary to the Constitution of the United States and a violation of the Act of Congress, March 2nd, 1867. 14th Statutes, 546, 187.

We ask that you- Honor instruct the Jury to render a verdict of Not Guilty as to the woman for there is nothing here that tends to incriminate her and we also ask that you- Honor direct a verdict in the case of Pink Franklin on the above grounds as stated to you- Honor.

His Honor. It is not necessary to argue that point further, even if you were to establish the fact that the warrant were null and void, or even if the man had no warrant at all it would not be competent for the Court to direct a verdict in favor of the defendant Pinkney Franklin, and the motion is refused. I will also leave it to the Jury as to the guilt or innocence of the other defendant. I don't care to discuss the matter, but I do not apprehend that it is a case in which the Court ought to direct a verdict in case of either of the defendants, and the motion is therefor- refused.

64 *Charge.*

Mr. Foreman and gentlemen, the indictment in this case charges Pinkney Franklin and Sad Franklin with murder, the charge is that Pinkney Franklin and Sad Franklin killed Henry E. Valentine, feloniously, wilfully and of their malice aforethought. To this charge the Defendants plead not guilty and by that plea they put on the state the burden of proving their guilt beyond a reasonable doubt. You will observe that in this case there are two defendants on trial, that is two persons are charged with the murder of Henry E. Valentine and it is competent, if the testimony satisfies you beyond a reasonable doubt to convict both of them or to convict one and to acquit the other or to acquit both if that is the conclusion to which the testimony leads you. The law is that where two or more persons are together participating in the intent to commit an act amounting to a crime, each one is responsible for the consequences of the act, though only one of them may have actually committed the act. I say that where two or more persons are present, aiding abetting and encouraging in the act, if two or more persons are together when an act is done and that act a crime and one of them does the act and the others aided and abetted and encouraged the act of the one that committed that act, then they are all equally guilty. If there were two or more parties present at the time and they were not aiding and abetting, encouraging or assisting in the act, then you cannot find against them though they were present at the time. Only the person who did the act is responsible and the mere fact of the others being present does not make them guilty.

In this case the defendants and there are two of them, are charged with murder, and murder is the unlawful killing of a human being with malice aforethought either expressed or implied.

If you find that *that* the person named here, Henry E. Valentine,

is dead and that his death was caused by the acts of these defendants or either of them then it is your duty to consider the character
65 of the act that caused his death and determine whether the defendants or either of them should be held responsible for his death, as the consequence of their act. If you are satisfied that Henry E. Valentine is dead and that these defendants killed him then if the killing was done with malice aforethought it is murder. Malice as you will see is the main element in a charge of murder.

It will be necessary for me to define to you then what is the meaning of the term malice. Malice is a term which implies hatred or illwill and if a man killed another from hatred or illwill then that killing was done with malice. Malice has a broader definition than that, if a person kill another and he is actuated by a spirit of wickedness or a determination to recklessly disregard the rights of mankind if he has a heart fatally bent on mischief and he kills a person with a sentiment of that kind, why then that is just as much murder as if he had killed from a spirit of hatred or illwill. As the old books have it, malice is a term of art that implies wickedness and excludes a just cause or excuse. If you are satisfied then that the killing was done with malice either express or implied then it was murder. Express malice may be shown from threats or any circumstances that show that it was the intent of the party to kill the deceased. When it is known that a person killed another and killed him intentionally that is implied malice, malice may also be implied from the use of a deadly weapon. If the mere fact is known that one person killed another or that the killing was done with a deadly weapon, then the law implies that the killing was done with malice.

When all the facts and circumstances of the killing are brought out then there can be no implication of malice but it must be proven like any other fact in the case. The Jury must look into the fact and pass on it just as any other fact in the case, and say whether or not it was a fact. If you find that the defendant killed the deceased and intended to kill him with malice aforethought, that it was their intention to kill him then it is your duty to find a verdict of guilty. If you have any doubt as to whether the killing
66 was done with malice, or if you are satisfied that it was without malice then the question is whether it was an unlawful killing.

Manslaughter is the unlawful killing of a human being without malice. If the circumstances fail to show you beyond a reasonable doubt that malice existed and yet that the killing was unlawful then it would be your duty to find a verdict of guilty of manslaughter. Manslaughter may be of two kinds, voluntary or involuntary. Involuntary manslaughter is the result of an unlawful act where there was no intent to take human life. Voluntary manslaughter is where a person in sudden heat and passion and upon sufficient legal provocation kills another. In a case of that kind the law excludes malice and holds the person guilty of manslaughter.

If a person is killed under such circumstances that show that the killing was lawful then that would be neither murder nor manslaughter, but entitles the defendant to a verdict of not guilty. In

this case the defendant interposes the plea of Self Defence, that is that the killing was a lawful one. That it was done in the exercise of a lawful right. Where a person kills another in self defence that is lawful, when a person kills another and pleads that it was done in self defence, on him rests the burden of proving his plea, not by the same measure as is incumbent on the state, that he must prove his defence beyond a reasonable doubt but he must prove it by the preponderance or greater weight of the evidence. That is in reference to his special plea. When the defendants here interpose the plea of self defence on them rest the burden of proving that plea by the preponderance of the testimony. If they fail in that then their plea is not established and is of no avail.

The right of self defence rests on certain well defined principles and they are not numerous. Where a person is without fault in bringing about the difficulty, where they are in danger of loosing their lives or of sustaining serious bodily harm, and where
67 there are no other probable means of escape save to kill the assailant, then the law says they have the right to kill and that it is self defence. If the testimony satisfies you that the defendants were without fault in bringing about the difficulty, that they were in danger of loosing their lives or of sustaining serious bodily harm and that there was no other means of escape but to kill, then that makes out a case of self defence, provided that *that* a person of ordinary reason and firmness would have done the same, and provided that the same impression would have been created in the mind of a person of ordinary firmness and reason, that is that they were in serious danger and that there was no probable means of escape. If they establish that plea then they are entitled to a verdict of not guilty. If any of the facts necessary to make out their plea are not established then their plea is not established and cannot avail. Each and every one of the facts necessary to the plea must be established.

It now becomes the duty of the Court to instruct you as to the laws governing arrest for a crime.

When a person is charged with crime before a Magistrate and he issues a warrant commanding an officer of the law to arrest the person so charged and places the warrant in the hands of such officer, then it becomes the duty of the officer to make the arrest, to execute the warrant. He may use whatever means are necessary to effect the arrest, he may go at whatever time will best effect the execution of the warrant and he may employ whatever force is necessary. He may call to his assistance whatever person or persons he may *be* deem necessary for purposes of identification or otherwise the law clothes him with all the authority that it is necessary for him to use. It clothes him with no more than that however, he is required to and must exercise a sound discretion, such as a person of ordinary prudence and firmness would exercise. If he exceeds the limit to which it is necessary for him to go then he becomes a transgressor and the law does not follow him in his trespass on the rights of another.

68 When an officer seeks to arrest a person and makes known his character as such officer, it then becomes the duty of the person to submit to arrest, if that person refuses to submit to the arrest then he resists and becomes a further violator of the law, in resisting the arrest, he has no right to do that, it is his duty to submit to the arrest. When a person comes up to arrest another whether he has a warrant or not, that person has the right to demand the cause of the arrest and to demand a sight of the warrant, and it is the duty of the officer to show him. A person has the right to resist an unlawful arrest, the court has held that unlawful arrest is an assault and the law gives him the right to resist an assault and employ whatever means may be necessary to free himself from the assault. A person has the right to demand the authority of an officer but he has no right to resist him by force. If he does he must then suffer the consequence.

If you should find that the deceased was an officer of the law and he was clothed with the authority to make this arrest and that he was proceeding within the limits of his authority to make the arrest, he had the right to use what ever force was necessary to effect the arrest and a resistance to that authority while he was acting within the limits of his authority was unlawful.

If you find in this case that the defendants were without fault and that they were in imminent danger or believed that they were in imminent danger, and if the circumstances by which they were surrounded were such that in your opinion as to induce a similar belief in the extent of such danger then if there were no other probable means of escape but to kill then they were entitled to do so in the exercise of the right of self defence. If any of these facts are not established by the preponderance of the testimony then they had no right to kill. Through out the case you will give the defendants the benefit of any reasonable doubt that may arise from the facts in the case, if you have a reasonable doubt as to whether they were

69 acting in self defence or not, then you are bound to find that that they were acting in self defence. If you have any reasonable doubt as to whether they have established any or all of the fact of their plea then you are bound to give them the benefit of that doubt and find that they have established it. If you find that their plea has not been established then you will inquire whether the defendants are guilty of murder or manslaughter or not guilty. If you have any doubt as to whether they are guilty of manslaughter or of murder then you will give them the benefit of the doubt and find them guilty of manslaughter.

The state is bound to prove its case beyond a reasonable doubt and if you have any doubt you will give the defendants the benefit of it.

You may as you have been instructed convict one or both of the defendants or acquit one or both of them according to the view you take of the testimony.

The form of your verdict will be guilty as to both, or guilty as to one and not guilty as to the other or not guilty as to both.

If you find them both guilty of murder that means that they will hang unless the Jury find a special verdict recommend- one or

both of them to the mercy of the court and that means that they will be confined at hard labor in the state penitentiary for life.

If you find one or both of them guilty of manslaughter that means that they will be confined for from two to thirty years.

That is an extract from our own supreme court and is correct. If in considering the plea of self defence that there was other probable means of escape other than to take the life of the deceased, then it was their duty to use such means. Take the record and write your verdict.

After remaining out for some time the foreman of the jury returned for information and the rest of the jury having been sent for his Honor instructs them as follows:

Mr. Foreman, I understand that you want some further instructions in the case and as I understand it what you
70 want to know is what authority a constable had to make the arrest whether he had the right to go in a man's house.

A constable stands on the same footing as a sheriff, if a warrant is placed in his hands to make an arrest it becomes his duty to make that arrest and the law clothes him with the power to do all that is necessary to make the arrest, you see then that you will have to inquire as to whether it was necessary for him to go into the house or not. Ordinarily if a constable goes up to a man and says I arrest you that is usually as far as he has to go, and that is all that is necessary if the other party submits to the arrest. The other party has a right to ask the reason for his arrest and his authority, if he has a warrant it then becomes his duty to exhibit the same, then if the party submits that is as far as the officer has the right to go. If he refuses to submit to the arrest then the officer has the right to go to whatever length is necessary to make him submit. If a man is in his own house he has the right to go to that house and go through the same process, he has the right to go in the house if it is necessary, he has the right to call the person out, and if he refuses to come out then he has the right to go in the house. If the door is open he can go in, if the door is closed he can demand that it be opened and if that is refused be can break down the door. He represents the majesty of the law and that may over ride all resistance. It uses whatever force is necessary and stops at nothing short of accomplishing its purpose. If it is necessary for them to pull down the house then they have the right to do that. If an arrest is resisted and active resistance is resorted to then the officer still has the right to use as a matter of fact, whatever force is necessary to accomplish his purpose.

JUROR WANNAMAKER asks: Has a constable or officer of the law the right to enter a house without first stating his mission?

HIS HONOR: Not unless it is necessary.

JUROR: It is not necessary for an officer to call to the party on the inside and state his mission.

71 HIS HONOR: I should think not Mr. Wannamaker common prudence would demand that he ask admission, but he has the right to demand admission.

JUROR: If he received no responce to his call he would have the right to enter.

His Honor: Yes sir, or if the house were closed and he received no response and he has good reason to believe that the refusal to answer amount- to a resistance to his authority, then he has the right to force an entrance. If admission is refused he has a right to force admission.

Motion to Direct Verdict of Not Guilty.

Now comes Jacob Moorer and John Adams, Esqs. Attorneys for the defendant herein and moves this Honorable Court to direct a verdict of not guilty in the above entitled cause on the grounds:

(1) That the warrant under which the deceased attempted to arrest the defendant was null and void, since the Act under which it was issued is contrary to the constitution of the State of South Carolina, being in violation of Article 1 and Section 5 of said State Constitution.

The language of the Constitution of the State of South Carolina herein referred to is as follows:

"The privileges and immunities of the citizens of this state and of the United States under the constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws." The defendant in this case is a negro and in order to make an unbroken argument on the issues herein raised it becomes necessary at this point to ascertain whether or not that race of people is considered citizens of the State of South Carolina and the States of the United States. This is settled we submit by the thirteenth and fourteenth amendments of the Constitution of the United States.

The undisputed testimony in this case is that the deceased went to the house of the defendant in this cause with the
72 intention of arresting him for making a violation of the labor contract law in South Carolina Section 357 of the Criminal Code for 1902, Vol. 2, Relating to the violation of laborers' contracts, as amended by an act entitled "An Act to amend. Section 357 Code of Laws 1902 Vol. 2, Relating to the violation of laborers' contracts" approved the 25th day of Feb. A. D. 1904, is the law herein claimed to be the law under which the warrant that the deceased proceeded to arrest the defendant at Bar was issued and which the Movers claim in no unmistaken terms to be contrary to the constitutional requirements of the State of South Carolina and therefore unconstitutional.

(2) It is further unconstitutional in that it is in violation of the Constitution of the United States Article IV. And also repugnant to and in violation of the thirteenth and fourteenth Amendments to the Constitution of the United States.

We recognize the fact that in the case of The State v. Chapman 56, S. C. at page 420 that His Honor Judge McIver passing on this section of the Code together with the Amendment thereto declared it to be constitutional. And we submit that if this decision of His Honor Judge McIver has not been interfered with by any Court whose Jurisdiction is higher, then the Constitutionality of the law

herein referred to is establis-ed. But this Court we are sure will recognize that recently this whole matter has come forward to be reviewed by His Honor Judge Brawly of the United States District Court. In a very learned decision handed down May 1907 and reported in the advanced sheet of the Federal Reporter Aug. 15th 1907, in a case entitled Ex Parte Drayton, et al., the learned Judge claimed Section 357 of the Criminal Code as amended by the Act of 1904, is contrary to the Constitution of the United States and in violation of the Act of the Congress Mar. 2nd 1867. See 14th Statutes 546c 187.

True Copy.

[L. S.]

G. L. SALLEY,
C. C. P. and G. S.

73 *Sentence.*

It having been solemnly demanded of the prisoner at the bar, if he hath anything to say, why sentence of death should not be passed upon him, he saith nothing further, unless as he had before said. Wherefore it is considered by the Court and pronounced as the judgment of the law, that the said Pink Franklin be taken hence to the place, whence last he came and there be kept in close and safe custody until Friday, the twenty-fifth (25) day of October next, and that on that said Friday, between the hours of ten in the forenoon, and two in the afternoon, he be taken to the place of execution in this County, and there be hanged by the neck until his body be dead. And may God have mercy on his soul.

J. C. KLUGH,
Presiding Judge.

Sept. 9. 1907.

I hereby certify that the within is a true and correct copy of the original Indictment, and Sentence of the Court in the case of the State vs. Pink Franklin and Sad Franklin. Witness my hand and official seal this 28th October, A. D. 1907.

[L. S.]

G. L. SALLEY,
C. C. P. and G. S.

Notice of Appeal.

To The Hon. P. T. Hildebrand, Solicitor:

Please take notice that, the above named Pink Franklin intends to appeal from the Sentence and Judgment of His Honor Judge J. C. Klugh, Presiding Judge of the Court of General Sessions, said sentence rendered on the ninth day of September, 1907. The above named defendant will appeal from the said judgment and sentence to The Supreme Court of South Carolina.

MOORER AND ADAMS,
Defendant's Attorneys.

74 Service hereof accepted this 10th day of Sept., 1907.

P. T. HILDEBRAND, *Solicitor.*

Notice of Extending.

To The Hon. P. T. Hildebrand, Solicitor:

Please take notice that on the 7th day of October, 1907, at the Court House in Orangeburg, S. C., and at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard the undersigned will move the Court before His Honor J. C. Klugh, Circuit Judge, to extend the time to perfect the appeal in the case of Pink Franklin convicted of murder at the term aforesaid.

MOORER AND ADAMS, *Attorneys.*

Time extended to October 25, 1907.

HILDERRAND, *Solicitor.*

And it is so ordered.

J. C. KLUGH, *Circuit Judge.*

Oct. 7, 1907.

Service hereof accepted this Oct. 1st, 1907.

A. J. HYDRICK, JR.,
For P. T. HILDEBRAND, *Solicitor.*

Exceptions.

The Defendant Pink Franklin excepts to the ruling and judgment of the Circuit Judge upon the following grounds:

(1.) His Honor erred in overruling the motion to quash and set aside the indictment which motion is as follows:

Now come the defendants Pink Franklin and Sad Franklin and move the Court to quash and set aside the indictment in this case on the following grounds:

(1.) The jury law under which the Grand Jury, which found the true bill, was organized, is unconstitutional, null and
75 void. This is true if the Court pleases, because the said jury law, is in violation of Art. 3, Sec. 17, of the Constitution of the State of South Carolina. The reading of this section is as follows:

"Every Act or Resolution having the force of law shall relate to but one subject and that shall be expressed in the title." The said jury law herein referred to and herein claimed to be in violation of the Constitution of the State of South Carolina and therefore null and void, is entitled, "An Act relating to the selection, drawing and summoning of jurors in the Circuit Courts of this State." Approved the seventh day of February 1902, and amended by An Act entitled "An Act to amend An Act, entitled An Act relating to the selection, drawing and summoning of jurors in the Circuit Courts of this State. Approved the seventh day of February 1902, by adding thereto a section to be known as section 18 A, to provide against an omission in preparing the jury lists and boxes. Approved January 21st 1905."

(2.) Because the said Act, after prescribing the qualification for jurors as provided in the constitution of 1895 of this State, adds "As they may deem otherwise well qualified to serve as Jurors." Meaning such as the Jury Commissioners may deem otherwise well qualified to serve as jurors.

(3.) Because the Circuit Judge further erred in overruling the motion to quash and set aside the said indictment on the following motion.

"That the jury law under which the Grand Jury, which found the true bill was organized, is unconstitutional, null and void, because the said jury law was enacted persuant to and predicated upon the constitution of 1895 of the State of South Carolina, and requires the same qualifications for jurors as are required for electors under the said constitution of 1895 for South Carolina.

And further because that, qualifications for electors as required by the said constitution of 1895 in Art. 2, (which Art. is hereby referred to and made a part of this motion) are in violation of the Act of Congress approved the 25th day of June, 1868.
76 (Cited—15th Stat. at Large, page 73.)

By the restrictions of the above cited Act, the State of South Carolina is prohibited from amending or changing the constitution of said State of 1868 in any manner that deprives persons from being electors who are qualified as electors under the constitution of 1868 of said State." The suffrage clause of the constitution of 1868 is as follows:

ART. 8, SEC. 2. "Every male citizen of the United States of the age of twenty one years and upwards not laboring under the disabilities named in this consti-ution without distinction of race color or former condition, who shall be a resident of this State at the time of the adoption of the constitution or who shall thereafter reside in this State one year and in the County in which he offers to vote sixty days next preceeding an election shall be entitled to vote for all officers that are now or hereafter may be elected by the people and upon all questions submitted to the electors at any election. Provided that no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States until such disqualifications shall be removed by the Congress of the United States. Provided, further, that no person while kept in any Alms House or Asaylum or of unsound mind or confined in any public prison shall be allowed to vote or hold office."

In overruling this motion the Circuit Judge erred by using the following language: The other motion has something to do with the question of suffrage. That I, have neither the information nor the inclination to pass upon. I do not think that it can be successfully maintained that Congress ever intended to place any restrictions upon the jury laws of and State. Each State in the Union has the right to limit its jury laws or its laws of Government and therefore the motion to quash on that ground is refused.

(4.) Because the Circuit Judge erred in over-ruling and refusing the motion to direct a verdict of not guilty. The motion is as fol-

lows: The Warrant under which the deceased attempted t
77 arrest the defendant was null and void, since the Act unde
which it was issued is contrary to the constitution of thi
State, being in violation of Art. 1, sec. 5.

And because the said warrant is contrary to the 13th and 14t
amendments to the constitution of the United States, and is in vio
lation of the Act of Congress, approved Mar. 2nd 1867. Sec. 14th
Statutes 546c, 187. Cited Ex Parte Drayton et al., advanced shee
Federal Reporter August 15, 1907.

(5.) Because the Circuit Judge erred in overruling the defend
ant's objection, "that no foundation had been laid for admitting
dying declaration and in admitting the testimony of J. H. Easterlin
and Walter Hutto so far as the same purports to be the dying declara
tion of the deceased Henry E. Valentine.

Because the Circuit Judge erred in charging the Jury, whe
an officer seeks to arrest a person and makes known his characte
as such officer it then becomes the duty of the person to submit t
the arrest. If that person refuses to submit to the arrest then h
resists and becomes a further violator of the law in resisting th
arrest. He has no right to do that.

(6.) Because the Circuit Judge erred in charging the Jury. "Th
right of self defence rests upon well defined principles and the
are not numerous. Where a person is without fault in bringin
about the difficulty, where they are in danger of losing their live
or of sustaining serious bodily harm and where there are no othe
probable means of escape save to kill the assailant, then the law
says they have the right to kill and it is self defence. If the testi
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of escape but to kill them that makes out a case of self defence pro
vided that a person of ordinary reason and firmness would hav
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78 and reason, that is that they were in serious danger and tha
there was no other probable means of escape. If they es
tablish that plea then they are entitled to a verdict of not guilty
If any of the facts necessary to make out their plea are not establishe
then their plea is not established and cannot avail. Each and ever
one of the facts necessary to the plea must be established."

(7.) Because in passing on a motion to direct a verdict of no
guilty as to Pink Franklin, His Honor the Circuit Judge erred i
using before the Jury the following language: "It is not necessar
to argue that point further. Even if you were to establish the fac
that the warrent was null and void or even if the man had no war
rant at all it would not be competent for the Court to direct a ver
dict in favor of the defendant Pink Franklin and the motion is re
fused. I will also leave it to the jury as to the guilt or innocence o
of the other defendant. I don't care to discuss the matter but I d
not apprehend that it is a case in which the Court ought to direct
verdict in case of either of the defendants and the motion is there
fore refused."

(8.) Because His Honor the Circuit Judge erred in charging the jury as follows:

A Constable stands on the same footing as a Sheriff. If a warrant is placed in his hands to make an arrest it becomes his duty to make that arrest and the law clothes him with the power to do all that is necessary to make the arrest. You see then that you will have to inquire whether it was necessary for him to go into the house or not. Ordinarily if a Constable goes up to a man and says I arrest you, that is usually as far as he has to go and that is all that is necessary if the other party submits to the arrest. The other party has a right to ask the reasons for his arrest and his authority. If he has a warrant it then becomes his duty to submit to the same. Then if the party submits that is as far as the officer has the right to go. If he refuses to submit to the arrest then the officer has the right to go to whatever length is necessary to make him submit. If a man is in his own house he has the right
79 to go to that house and go through the same process, he has the right to go in the house if it is necessary, he has the right to call the person out and if he refuses to come out then he has the right to go in the house, if the doors is open, he has a right to go in. If the door is closed he can demand that it be opened and if that is refused he can break down the door. He represents the Majesty of the law and that may over ride all resistance. It uses whatever force is necessary and stops at nothing shorter than accomplishing its purpose.

If it is necessary for them to pull down the house then they have the right to do that. If an arrest is resisted and active resistance is resorted to then the officer still has the right to use as a matter of fact what ever force is necessary to accomplish his purpose.

Juror Wannamaker asks, "Has a Constable or officer of the law the right to enter a house without first stating his mission? His Honor: "Not unless it is necessary." Juror, It is not necessary for an officer to call to the party on the inside and state his mission? His Honor, "I should think not Mr. Wannamaker, common prudence would demand that he ask admission, but he has the right to demand admission. Juror, "If he receives no responce to his call would he have the right to enter? His Honor, "Yes sir or if the house were closed and he received no response and he has good reasons to believe that the refusal to answer amounts to a resistance to his authority then he has a right to force an entrence. If admission is refused he has the right to force admission."

MOORER AND ADAMS,
Defendant'- Attorneys.

A copy hereof was served on me this day, Oct. 19, 1907.
P. T. HILDEBRAND, *Solicitor.*

A true copy.
[Seal Supreme Court of South Carolina.]
U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 21,183. South Carolina Supreme Court. Term No. 164. Pink Franklin, plaintiff in error, vs. The State of South Carolina. Filed May 18th, 1908. File No. 21,183.